THE LAW AND PRACTICE OF Writs of Error, IN THE COURTS OF Common Pleas, King's Bench, Exchequer Chamber, and Parliament.

To which are subjoined

The Costs in Error: likewise special Writs of *Ca. sa. Fi. fa.* and *Sci. fa.* for each Court, after Affirmance, Reversal, and Nonpros in Error.

N. B. The Precedents were drawn by *Special Pleaders* of the first Repute, *viz.*

J. Burland, Esq; | A. Chambre, Esq;
F. Bower, Esq; | J. Lane, Esq;

And others of distinguished Abilities

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ADVERTISEMENT.

WRITS OF ERROR are of some antiquity, being plainly to be discovered as far back as the reign of *William the Conqueror*, which is a space of upwards of five hundred years; for we find the forms of two sorts of writs of error inserted in the *Register of writs*, preserved in *Chancery*, a book peculiarly calculated (as its title imports) for the repository of precedents of the different kinds of writs, not only of such as were introduced into our jurisprudence by the *Norman* subjects and followers of *William*, but likewise of other writs which were framed by Masters in *Chancery*. And this and other concurring testimonies make it evident, that the use of these writs of error was originally borrowed from the *French*, by whom it is termed *proposition d'erreur*.

But

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WRITS OF ERROR are of ſome antiquity, being plainly to be diſcovered ſo far back as the reign of *William* the *Conqueror*, which is a ſpace of upwards of ſeven hundred years; for we find the forms of two ſorts of writs of error inſerted in the *Regiſter of writs*, preſerved in *Chancery*, a book peculiarly calculated (as it's title imports) for the repoſitory of precedents of the different kinds of writs, not only of ſuch as were introduced into our juriſprudence by the *Norman* ſubjects and followers of *William*, but likewiſe of other writs which were framed by Maſters in *Chancery*. And this and other concurring teſtimonies make it evident, that the uſe of theſe writs of error was originally borrowed from the *French*, by whom it is termed *propoſition de erreur*.

But controverſies upon writs of error, (and alſo upon writs of attaint,) are mentioned by *Coke* *, to have been rare, during the reigns of *Edward* III. *Richard* II. and *Henry* IV. but that they ſoon afterwards began to grow more frequent; inſomuch that, in queen *Elizabeth's* time, the *aſſignment of errors* was very common; and certain it is, that error makes the largeſt title in all *Croke*, and his contemporary reporters. This general practice, therefore, gave riſe to the ſeveral ſtatutes, which were enacted in that reign, for the regulation of theſe ſuits; that of the 27th of *Elizabeth* being however the chief, and indeed the principal one, (ſaving ſuch as relate to coſts, and the inferior courts of record) by which they are governed at this day.

That it is to writs of error we are indebted for our ſettled law caſes, ſome writers have not heſitated to affirm; who have alſo added, that determinations of the *Exchequer Chamber*; (and the ſame too,

* 6 Report. Higgens's caſe.

we presume they meant, of the other resorts of justice upon writs of error,) like the laws of the *Medes* and *Persians*, have seldom undergone contradiction or alteration: the right of the subject to appeal being a fundamental principle of the constitution.

This publication includes every thing that is necessary for the management of suits founded upon writs of error; which suits are in general of twice as long duration as any other, except those in the courts of equity: for it contains, what the title page sets forth, not only the law of the land, and the practice of the respective courts at *Westminster*, (into which only writs of error can be brought in this kingdom;) but also the costs of suit, and precedents of the pleadings, &c. in great variety: the whole being formed upon a plan to put it in the power of every practicer of the law, to conduct these litigations (*pro* and *con.*) to the best advantage, without having recourse to any other assistance.

Law

Law books in general are ſaid to conſiſt of collections; (and from the nature of the ſubject, muſt do ſo in ſome degree:) but then it has alſo been obſerved, and found to be true by thoſe who have made the experiment, that the taſk is much more troubleſome in the *law*, than in any other profeſſion or ſcience: for almoſt all other ſubjects are treated of, and diſcuſſed, with connexion and regularity: whereas the law is not; but, on the contrary, is with difficulty capable of it. Yet will it be found, that the practical part of *the Law and Practice of writs of error*, together with a very conſiderable ſhare of the precedents, *&c.* are intirely NEW.

The precedents interſperſed in the proceedings, and thoſe of ſpecial writs of execution, and *ſcire facias*, after *affirmance*, *nonpros*, and *reverſal* of *judgments*, (which are depoſited in chapter the laſt;) will be found equally uſeful with the reſt of the contents; as we dare pronounce them the moſt correct of any that have ever yet appeared in print. The declarations, for

example, to ſay nothing of the other pleadings, are drawn in a ſuperior manner to any that are now current in the profeſſion, (not excepting thoſe of the famous Mr. *Warren* :) and as they run on general matters, which are wanted almoſt every term, ſo can they be tranſcribed herefrom, and made to ſerve, occaſionally, for other cauſes beſides thoſe in error, with the greateſt facility; any one of which precedents ſingly, coſt more than the price of this whole work.

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THE LAW AND PRACTICE OF Writs of Error.

CHAP. I.

From what courts, and into what courts, and in what cases, a writ of error lies.

A WRIT OF ERROR lies for some supposed mistake in the proceedings of a court of record; for, to amend errors in a base court, not of record, a writ of *faux* judgment lies. The writ of error only lies upon matter of *law* arising upon the face of the proceedings; so that no evidence is required to substantiate or support it: and there is no method of reversing an error in the determination of facts, arising upon the merits of the action, but by Finch. L. 484.

an attaint, or a new trial, to correct the mistakes of the former verdict.

A writ of error lies from the inferior courts of record in *England* into the *King's Bench*, and not into the *Common Pleas*. (*Finch. L.* 480. *Dyer* 250.) Also from the *King's Bench* in *Ireland*, to the *King's Bench* in *England*. It likewise may be brought from the *Common Pleas* at *Westminster* to the *King's Bench*; and then from the *King's Bench* the cause is removeable to the house of lords. From proceedings on the law side of the exchequer, a writ of error lies into the court of exchequer chamber, before the lord chancellor, lord treasurer, and the judges of the court of *King's Bench* and *Common Pleas*: and from thence it lies to the house of peers. From proceedings in the *King's Bench*, in debt, detinue, covenant, account, case, ejectment, or trespass, originally begun therein by bill, (except where the king is party) it lies to the exchequer chamber, before the justices of the *Common Pleas* and barons of the Exchequer; and from thence also to the house of lords. (*Statute* 27 *Eliz. c.* 8.) But where the proceedings in the *King's Bench* do not first commence therein by bill, but by original writ sued out of chancery, this takes the case out of the general rule laid down by the statute; (1 *Roll. Rep.* 264. 1 *Sid.* 424. 1 *Saund.* 346. *Carth.* 180. *Comb.* 295.) so that the writ of error then lies without any intermediate stage of appeal, directly to the house of lords, the dernier resort for the ultimate decision of every civil action. Each court of appeal, in their respec-

tive ſtages, may upon hearing the matter of law, in which the error is aſſigned, reverſe or affirm the judgment of the inferior courts; but none of them are final, ſave only the houſe of peers, to whoſe judicial deciſions all other tribunals muſt therefore ſubmit and conform their own.

And from criminal juriſdictions.

A writ of error alſo lies from all inferior *criminal* juriſdictions to the court of *King's Bench*, and from thence to the houſe of lords; and may be brought for notorious miſtakes in the judgment or other parts of the record: as where a man is found guilty of perjury and receives the judgment of felony, or for other leſs palpable errors; ſuch as any irregularity, omiſſion, or want of form in the proceſs of outlawry, or proclamations; the want of a proper *addition* to the defendant's name, according to the ſtatute of *additions*; for not properly naming the ſheriff or other officer of the court, or not duly deſcribing where his county court was held; for laying an offence committed in the time of the late king, to be done againſt the peace of the preſent; and for many other ſimilar cauſes, which (though allowed out of tenderneſs to life and liberty) are not much to the credit or advancement of the national juſtice. Theſe writs of error to reverſe judgments in caſe of miſdemeanors, are not to be allowed of courſe, but on ſufficient probable cauſe ſhewn to the attorney-general, and then they are underſtood to be grantable of common right, and *ex debito juſtitiæ*. But writs of error to reverſe attainders in capital caſes are only allowed *ex gratia*; and not

without expreſs warrant under the king's ſign manual, or at leaſt by the conſent of the attorney-general. Theſe therefore can rarely be brought by the party himſelf, eſpecially where he is attainted for an offence againſt the ſtate: but they may be brought by his heir, or executor, after his death, in more favourable times; which may be ſome conſolation to his family.

1 Vern. 170. 175.

The effect of falſifying, or reverſing an outlawry is, that the party ſhall be in the ſame plight as if he had appeared upon the *capias:* and, if it be before plea pleaded, he ſhall be put to plead to the indictment; if after conviction, he ſhall receive the ſentence of the law: for all the other proceedings, except only the proceſs of outlawry for his non-appearance, remain good and effectual as before. But when judgment, pronounced upon conviction, is *falſified* or *reverſed*, all former proceedings are abſolutely ſet aſide, and the party ſtands as if he had never been at all accuſed, reſtored in his credit, his capacity, his blood, and his eſtates: with regard to which laſt, though they be granted away by the crown, yet the owner may enter upon the grantee with as little ceremony as he might enter upon a *diſſeiſor*. But he ſtill remains liable to another proſecution for the ſame offence: for, the firſt being erroneous, he never was in jeopardy thereby *.

2 Hawk. P. C. 462.

* See Chap. XXIV.

But

But without a judgment, or an award, in the nature of a judgment, no writ of error lies; for the words of the writ are, *si judicium redditum sit*; and although in cases of outlawry, the judgment is given in the county court, which is no court of record, yet when the sheriff returns the exigent whereby the outlawry appears of record, or the outlawry be removed by a *certiorari*; then a writ of error lies. 1 Inst. 288.

In the register there are two writs of error:

The first, To remove the record.

The second, *Quod coram vobis residet.*

Writ of error, quod coram vobis residet.

Writ of error in *B. R.* to reverse a Fine, upon which the transcript and proclamations are removed, and after the plaintiff becomes nonsuit; now another who hath cause may have a writ of error, *quod coram vobis residet.* 3 Lev. 106. Rag & Bowley.

There is another writ of error, *Tam in redditione judicii, quam in adjudicatione executionis:* which may be brought by bail upon a judgment recovered against them by *scire facias* *.

The writ of error is in nature of a commission, or rather a *certiorari*; it is not an action to recover any thing but to restore to what was lost, and to discharge of damages, and fines: therefore in error to reverse a judgment in ejectment, outlawry against one of the plaintiffs is no plea. Cr. Jac. 616. Bethel *et al* v. Harris. Palmer. 151. Bethel *et al* v. Parry.

* See error in parliament.

Godb. 66. 68. God. 44. The defendant hath no day in court by the writ of error, yet by the *scire facias* which is sued out upon it he hath a day.

It is to be directed to those before whom the judgment was given, as an *habeas corpus* is always directed to him that hath the custody of the body.

Hill. 649. Spry v. Millar. If a writ of error be directed to the *mayor*, *aldermen*, and *recorder* of *Lancester* in *Cornwall*, and the record is certified by the mayor, alderman, and *deputy* recorder; the court being held by letters patent: this is not well certified; for as much as this ought to be certified in the names of the judges of the court; and it doth not appear by the letters patent that the recorder had power to make a deputy.

2 Nel. Abr. 714. 715. 721, &c. 728. For variance between the original writ and declaration, or want of an original, *&c.* and where proceedings are so erroneous as not to be amended; for faults in verdicts, executions, *&c.* and where any thing material is omitted in a judgment; a writ of error lies, and the judgment shall be reversed. So where the stiles of inferior courts are wrong, or insufficiently named, *&c.* their judgments may be reversed.

CHAP.

CHAP. II.

Acts of parliament relating to writs of error.

5 *Edw.* III. 2 & 10 *Edw.* III. *c.* 2. 3.

AUthorize the bringing a writ of error from the palace court into the *King's Bench.*

14 *Edw.* III. *c.* 6. & 28 *Ed.* III. *c.* 10.

The mayor, ſheriffs and aldermen of *London* to cauſe errors *&c.* to be redreſſed.

31 *Edw.* III. *c.* 12.

Erroneous judgments given in the exchequer to be corrected before the chancellor, and treaſurer, barons, and juſtices.

9 *R.* II. *c.* 8.

Gives a writ of error to him in reverſion, his heirs, or ſucceſſors, upon judgment againſt tenant for life, *&c.* and by equity to him in remainder.

9 *Hen.* V. *c.* 4. & 4 *Hen.* VI. *c.* 3.

Alſo relate to writs of error.

8 *Hen.* VI. *c.* 12 & 15.

The judges may reform defects in records, proceſs, plea, warrant, writ, panel, or return; except in appeals, indictments of felony, or

treaſon, outlawries of the ſame, and ſubſtance of proper names, ſirnames, and additions left out in original writs, exigents, and in others, writs of proclamation (contrary to 1 *H.* 5. 5. of *additions.*)

3 *Hen.* VII. *c.* 10.

Where any perſon bound by a judgment ſhall ſue (before execution had) a writ of error to reverſe it: if the judgment is affirmed, the writ diſcontinued, or the party become nonſuit, the perſon againſt whom ſuch writ is ſued ſhall recover his coſts and damages.

32 *Hen.* VIII. *c.* 30.

Relates alſo to error.

34 *Hen.* VIII. *c.* 16.

Erroneous judgments before the juſtices of grand ſeſſion in *Wales*, ſhall be reverſed in *B. R.* in *England*, if in a plea real or mixed. But for perſonal matters, to be redreſſed before the preſident and counſel in *Wales*.

18 *Eliz.* *c.* 14.

Enacts that after verdict in any court of record, no ſtay or reverſing judgment upon writs of error, for want of form in any writ, original or judicial, *count*, *declaration*, *plaint*, *bill*, *ſuit* or *demand*, or by reaſon of any imperfect or inſufficient return of the ſheriff, or other officer, warrant of attorney, or default in progreſs upon or after aid prier and voucher.

Extends

Extends not to felony or murder, nor to any writ, bill, action, or information, upon *penal statutes.*

23 *Eliz. c.* 3.

Fines and recoveries, and all matters concerning them may be inrolled, and shall not be reversible for false latin, rasure, interlining, misentering, misreturn, or nonreturn of the sheriff, or any other matter of form, and not of substance.

27 *Eliz. c.* 8.

Enacts, " That where a judgment is given " in the *King's Bench*, in *debt*, *detinue*, *cove-* " *nant*, *accompt*, *action upon the case*, *ejectione* " *firmæ*, *or trespass*, first commenced there " (except where the queen is party,) the " *plaintiff* or *defendant*, may sue forth of the " chancery a writ of error, commanding the " chief justice to cause the record to be " brought before the justices of the *Common* " *Pleas*, and barons of the exchequer, into " the exchequer chamber; which justices " and barons, or any *six* of them, (being of Cr. *Jac.* 663 " the *coif)* shall have power to examine, re- " verse, or affirm, the said judgment: other " than for error concerning the jurisdiction " of the *King's Bench*, or want of form in any " writ, return, plaint, declaration, or other " proceeding. And after such judgment is " reversed or affirmed, the said record shall " be remanded, that the *King's Bench* may " proceed thereupon as shall appertain: yet " such reversal or affirmation shall not be so final

" final but that the party who finds himself " grieved, may still sue in parliament as be- " fore."

27 *Eliz. c.* 9.

Ordains that the act of 23 *Eliz. c.* 3. shall extend to fines and recoveries in *Wales.*

31 *Eliz. c.* 1.

The not coming of the chancellor shall not make a discontinuance of the error in the exchequer chamber.

And for error therein sued upon a judgment in the *King's Bench, three* of the justices, or barons, may *adjourn* it, and it shall be no discontinuance.

3 *Jac.* 1.

After verdict, execution shall not be stayed by writ of error, in actions of debt or contract, without bail in double the sum recovered, to pay (if judgment affirmed) *all* damages, *&c.*

Gale & Till, 4 Mod. 244.

It was held that an alderman who brings error shall not give bail, though, not excepted by the statute, neither shall he pay costs.

Judgment on bail bonds and bonds for performance of covenants are excepted.

This act extends not to executors or administrators, but ought to be literally taken. *Hill* and *Drew*, 15 & 16 *Car.* 1.

21 *Jac.* I. *c.* 13.

After verdict judgment ſhall not be ſtayed or reverſed upon a writ of error, for any variance in form only between the original writ, or bill, and the declaration, plaint, or demand, or for want of an averment of the party's life; ſo as it be proved he or they be in liſe, or awarding *venire*, *habeas corpus* or *diſtringas*, to a wrong office upon any inſufficient ſuggeſtion; or that the *viſne* was in ſome part miſawarded, or ſued out of more or fewer places than ought; ſo as ſome one place is rightly named, or for miſnaming any of the jurors in the ſirname, or addition, ſo as *conſtat de perſona*, or for want of a return to any of the writs, ſo as a panel is returned and annexed thereto; or that the officer's name is not ſet to the return, ſo as it is proved the writ was returned, or by reaſon that the plaintiff *in ejectione firmæ*, or in any perſonal action, being under age, appeared by attorney and the verdict paſſed for him. But extends not to felony, murder, treaſon, or to any writ, bill, action or information upon penal ſtatutes.

13 *Car.* II. *c.* 2.

After verdict execution ſhall not be ſtayed by writ of error in an action of debt on 2 *Ed.* 6. for not ſetting out tithes, action on the *caſe on aſſumpſit*, *trover*, *covenant*, *detinue*, *or treſpaſs*, unleſs bail given as directed by 3 *Jac.* 1. to pay coſts and damages.

The

16 *Car.* II.

The not coming of the lord chancellor and lord treasurer or either of them at the day of the return of any writ of error, by virtue of 31 *Ed.* 3. shall not abate or discontinue such writ; but if both or either chief justice or lord chancellor or lord treasurer come, the suit shall proceed; provided judgment be not given unless both the lord chancellor and lord treasurer are present.

V. 20 Car. 2.

16 & 17 *Car.* II. *c.* 8.

(Stiled in 1 *Ventr.* 100. an omnipotent act) Enacts that after verdict execution shall not be stayed or reversed for informality, in not producing any deed, administration, want of pledges, *vi et armis*, *contra pacem*, mistake of christian name or sirname, sum of money, day, month, or year, in the record (*whereto the defendant might have demurred.*)

Nor execution impeded by a writ of error in any personal action or in dower or *ejectione firmæ*, (after verdict) unless bail shall be given.

Exceptions.

Error brought by executors, and administrators, popular actions, actions on penal statutes (except on 2 *Ed.* 6.) indictments, presentments, informations, and appeals, are excepted.

Writs of error from inferior courts are supersedeas's when allowed without bail, being left out of the above acts.

This

This act made perpetual by 22 & 23 *Car.* 2. *c.* 4. Perpetual.

20 *Car.* II. *c.* 4.

Judgment may be given in a writ of error in the *Exchequer* in the presence of the lord keeper of the great seal, notwithstanding the vacancy of lord treasurer.

30 *Car.* II. *c.* 6.

An act made 17 *Car* 2. *c.* 8. enacting that in all actions real, personal, or mixt, the death of either party between verdict and judgment, shall not be alledged for error, is made perpetual. 1 *Jac.* 2. *c.* 17.

Counsel prayed abatement of a writ of error on 16 & 17 *Car.* 2. by affidavit of *cestui que vies* death after judgment two days and by the act the damages are to be from the judgment affirmed in error, which was a term after-granted by the court. 3 Keb. 205. 218. 629. 630.

8 & *and* 9 *W.* III. *c.* 11.

Relates to costs in error after judgment on demurrers, but dont extend to executors.

11 & 11 *W.* III. *c.* 14.

No fine or recovery, judgment in any real or personal action after 1st *May* 1699. shall be reversed for error unless commenced and prosecuted with effect, within twenty years after levying such fine, &c. but persons intitled to such writs of error being under age, V. Plo. 373. Cro Jac. 313.

covert

covert, *non compos mentis*, imprisoned, or beyond sea, when the title accrued, may bring error if twenty years are past, provided they do so within five years after their being of age, *&c.*

Strange 837. The court refused to quash a writ of error brought after twenty-nine years had elapsed since the judgment.

4 & 5 *Ann. c.* 16. *par.* 25.

Relates to costs.

9 *Ann. c.* 16. 5 *G.* 1. *c.* 13.

Writs of error varying from the original record, or defective, are amendable by the court.

And after verdict in any court of record, judgment shall not be stayed, or reversed, upon a writ of error, for any defect in form or substance, in any bill, writ, *&c.* or for variance in such writs from the declaration or other proceedings.

Strange 807.

Error returnable before judgment obtained, is such a fault as is not amendable by this act: but held by the last case that if *tested* before the judgment, it is good, being the usual course of practice for preventing and suspending executions.

March 140.

CHAP.

CHAP. III.

Containing the proceedings under a writ of error.

In the Common Pleas.

THE plaintiff's attorney generally knows when the defendant intends to have a writ of error.

In ſuch caſes care ſhould be taken to have coſts allowed by the prothonotaries for ſuing out an original writ, which becomes neceſſary in all ſuits commenced in this court by common *capias ad reſpondendum*, when a writ of error is brought, in order to warrant the proceedings: the neglect whereof is attended with ſerious conſequences.

Theſe coſts are to be added to thoſe of the action before allowed on the taxation, and will be more or leſs in amount according to the *number of counts*, and the *damages* of the declaration; not the damages recovered by the judgment; but thoſe of the declaration: for by the damages of the declaration alone, is always charged the king's fine, which encreaſes proportionably as thoſe damages are laid higher than 40 *l.* but if 40 *l.* exactly, or lower, no fine is payable.

Directions

Directions for suing out the writ of error.

A *præcipe* is to be made for the cursitor of that county in which the *venue* is laid; thus,

Precipe for the writ of error.

Middlesex. *Writ of error for* John Gregory, *at the suit of* Ann Hook, *on a judgment* in case *in the* Common Pleas, *of* Easter *term*, 1779.

Fen. attorney.

May 10, 1779.

The cursitors office is in chancery-lane. Pay for the writ of error, 13 *s.* and 6 *d.* unless wanted before the next seal; in which case, *extra* fees must be paid.

It must be allowed and served with suitable expedition; for until that is done, neither the person or property of the defendant are secure from being taken in execution.

This writ of error therefore must be taken to and left with the clerk of the errors, *Stephen Hough, Esq*; at ~~the~~ attorney's chambers ~~of the chief justice of the Common Pleas, in Serjeants-inn.~~ Southampton buildings Chancery lane

The clerk of the errors takes down the names and abode of the attornies on both sides, to know where to send to them in the progress of the business.

Pay for allowing the writ of error in this court 2 *l.* 2 *s.* 6 *d.* upon payment whereof the clerk

clerk of the errors delivers the allowance in writing in this form;

Hooke
and
Gregory }

I have allowed a writ of error in this cause, this 16th *day of* May, 1779.

S. Hough,
clerk of the errors.

Serve a copy on the plaintiff's attorney.

The safest way is for the defendant's attorney to take out a rule to be present at taxing costs, which is to be had at the secondaries office in the *Inner Temple*. Pay for it ~~6d.~~ 6/ to serve a copy of it on the plaintiff's attorney, — to bespeak the writ of error without delay, least the next seal should be lost; and to be ready to serve a copy of the allowance when he attends the taxation.

CHAP. IV.

The bail in error.

IF a writ of error be brought after verdict, he that brings the writ, or that is plaintiff in error, muſt in all caſes find ſubſtantial pledges of proſecution or bail: (*Stat.* 3. *Jac.* I. *c.* 8. 13 *Car.* II. *c.* 2. 16 & 17 *Car.* II. *c.* 8. to prevent delays by frivolous pretences to appeal; and for ſecuring payment of coſts and damages which are now payable by the vanquiſhed party in all, except a few particular inſtances, by virtue of the *ſtat.* 3. *Hen.* VII. *c.* 10. 13 *Car.* II. *c.* 2. 8 & 9. *W.* III. *c.* 11. 4 & 5 *Ann. c.* 16.

If therefore it is a bailable writ of error under any of the foregoing acts of parliament; bail muſt be given within four days next after the allowance thereof; otherwiſe the defendant in error is at liberty to levy an execution on the body or goods of the plaintiff, notwithſtanding the exiſtence of the writ of error, and the ſervice of the allowance, as before mentioned.

Rule E. 16. Car. II.

The practice.

Take the bail to the clerk of the errors. He enters their names and reſidence in the bail-book kept by him, and gets them properly acknowledged before one of the judges.

Notice hereof in writing muſt be ſerved as in other caſes of bail, only adding the words,

in

[illegible] of Court, [illegible]

[illegible] and [illegible] the defendant at law the plaintiff in [illegible] as follows:

To the Common Pleas.

John Gregory, plaintiff,

against

Ann Hock, defendant.

Mr. Ken,

This same day [illegible] this day put [illegible] in for the plaintiff in this [illegible], upon the [illegible] bail to [illegible] [illegible] before the honourable [illegible] Court, at his * house in Lincoln's-Inn-fields, and there [illegible] John Finchly of Duke-street, in the parish of Saint Margaret Westminster, in the county of Middlesex, Goldsmith, and Richard Goodwill of Bedford-street, in the same parish and county, [illegible]. Dated the [illegible] day of May, 1779.

I am

[illegible]

R. Ken, attorney

for the plaintiff in error.

---

* Or, chambers in Serjeants Inn Chancery-lane.

C 2 [illegible]

The Clerk of the Crown W. Smith
says otherwise.

in error, and making the defendant at law the plaintiff in error, as follows:

In the Common Pleas.

In error. John Gregory *plaintiff.*
Between *and*
Ann Hook *defendant.*

Mr. Den,

Take notice that special bail was this day put in for the plaintiff in this cause, upon the writ of error brought by him, before the honourable Mr. justice Gould, *at his* * *house in* Lincolns-inn-fields, *and their names are,* John Friendly *of* Duke-street, *in the parish of Saint* Margaret Westminster, *in the county of* Middlesex, *Gentleman, and* Richard Goodwill *of* Parliament-street, *in the same parish and county, Gentleman. Dated the* 20th *day of* May, 1779.

Notice of bail in error.

I am
Yours, &c.

R. Fen, *attorney*
for the plaintiff in error.

* Or, chambers in Serjeants Inn Chancery-lane.

5 *W.* & *M.*

Rule.

The defendant in error muſt except againſt the bail in error within 20 days next after notice thereof duly ſerved, or the bail ſtand immoveable.

16 & 17 *Car.* II.

In ejectment, after verdict and error thereon, the plaintiff's own recognizance is ſufficient, without any other ſurety: he becomes bound in double the value of one year's rent; and muſt be examined on taking his recognizance if he is worth ſo much; but if he finds bail, he need not be bound himſelf. *In dower* on error brought the plaintiff hath the like privilege.

As ſoon as the exception is entered againſt the bail, take out a rule from the clerk of the errors for better bail. Serve a copy, and if the bail do not juſtify themſelves in four days after the ſervice, the defendant in error will be at liberty to ſue out his execution on the expiration of the ſaid four days.

Rule for better bail.

Gregory *and* Hook } *Unleſs the plaintiff in the writ of error puts in better bail within four days next after notice hereof given to the ſaid plaintiff, or his attorney, execution will iſſue.*

S. Hough.
clerk of the errors.

After

After this rule is received, the following notice of justification of the bail is to be returned.

In the Common Pleas.

In error. John Gregory *plaintiff.*

Between

and

Ann Hook *defendant.*

Take Day.

Take notice that John Finnerty, *and* Richard Goodwill, *the bail put in for the plaintiff in this cause on the writ of error brought by him, of whose addition and place of abode you have had notice, shall on, the first day of the next Trinity term, justify themselves in this honourable court, as sufficient bail for the said plaintiff. Dated the eighth day of May, 1779.*

I am

Your, &c.

R. Fen.

plaintiff's attorney.

If execution should issue for want of bail, as in default of justification, it only removes the superfedeas to the first execution; the writ of error stands as good as before in all other respects, and the plaintiff is still at liberty to proceed thereon to a reversal of the judgment at his first occasion, and if he succeeds he shall have restitution.

The Law and Practice

of W. & M.

[illegible] law in error shall except against the bail in error within 20 days next after [illegible] subscribed, or the bail fined [illegible]

[illegible] Car. II.

[illegible] verdict and [illegible] recognizance is [illegible] other surety: he becomes [illegible] the value of one year's rent [illegible] taking his recognizance [illegible] the party; but if he finds bail [illegible] be bound himself. If there [illegible] error brought the plaintiff hath the like [illegible]

[illegible] as soon as the exception is entered against [illegible] take out a rule from the clerk of the [illegible] for better bail, before a copy, and [illegible] shall do not [illegible] themselves in four days [illegible] the service, the defendant in error will [illegible] liberty to [illegible] out his execution on the expiration of the said four days.

Gregory and Hook } *Unless the plaintiff in the writ of error, pays in better bail within four days next after notice hereof given to the said plaintiff, or his attorney, execution will issue.*

S. Hough,
Clerk of the Errors.

Ah. 1

After this rule is received, the following notice of justification of the bail is to be returned.

In the Common Pleas.

In error. John Gregory *plaintiff.*
Between *and*
Ann Hook *defendant.*

Mr. Den,

Take notice that John Friendly, *and* Richard Goodwill, *the bail put in for the plaintiff in this cause on the writ of error brought by him, of whose additions and places of abode you have had notice, will on, the first day of the next* Trinity *term, justify themselves in this honourable court, as sufficient bail for the said plaintiff. Dated the* 25th *day of* May, 1779.

I am

Yours, &c.

R. Fen.
plaintiff's attorney.

If execution should issue for want of bail, or in default of justification, it only removes the supersedeas to the first execution: the writ of error stands as good as before in all other respects, and the plaintiff is still at liberty to proceed thereon to a reversal of the judgment if he sees occasion, and if he succeeds he shall have restitution.

The Bail and Notice

3 W. & M.

The defendant in error must except against the bail in error within 20 days next after notice thereof duly served, or the bail shall be allowable.

16 & 17 Car. II.

[illegible] verdict and [illegible] the plaintiff's own recognizance in [illegible] and other surety; he [illegible] the value of one year's rent [illegible] on taking his recognizance [illegible] be worth so much; but if he finds bail, he need not be bound himself. *In error* or error brought the plaintiff hath the like privilege.

As soon as the exception is entered against the bail take out a rule from the clerk of the errors for better bail. Serve a copy, and if the bail do not justify themselves in four days after the service, the defendant in error will be at liberty to take out his execution on the expiration of the said four days.

Gregory and Black } *Unless the plaintiff in the writ of error puts in better bail within four days next after notice hereof given to the said plaintiff, or his attorney, execution will issue.*

S. Hough,
Clerk of the errors.

At

After this rule is received, the following notice of justification of the bail is to be returned.

In the Common Pleas.

In error. John Gregory *plaintiff.*
Between *and*
Ann Hook *defendant.*

Mr. Den,

Take notice that John Friendly, *and* Richard Goodwill, *the bail put in for the plaintiff in this cause on the writ of error brought by him, of whose additions and places of abode you have had notice, will on, the first day of the next* Trinity *term, justify themselves in this honourable court, as sufficient bail for the said plaintiff. Dated the* 25th *day of* May, 1779.

I am

Yours, &c.

R. Fen.
plaintiff's attorney.

If execution should issue for want of bail, or in default of justification, it only removes the supersedeas to the first execution: the writ of error stands as good as before in all other respects, and the plaintiff is still at liberty to proceed thereon to a reversal of the judgment if he sees occasion, and if he succeeds he shall have restitution.

All persons who sue out writs of error must be careful to have the bail ready to justify in due time; for the judges will on no account allow an hour's further time for the justification than the usual course of practice admits of: because they say that bail on an arrest, and bail in error differ greatly: in the one, the plaintiff has proved the legality and justice of his demand; in the other it is doubtful in the beginning, and very often unjust, and not recoverable.

No objection lies against the same persons who became bail in the original action, being bail again in error, if able to justify as such. Unless it is in parliament, where new bail must be given.

Condition of the recognizance.

By the very nature of the recognizance, the bail cannot render to prison the plaintiff in error in discharge of themselves: for the condition is "*That the plaintiff in error shall prosecute his writ of error with effect; and if the judgment is affirmed, shall satisfy the debt, damages, and costs; together with such costs as shall be awarded by occasion of the delay of execution: or else that the bail shall do it for him.*

C A S E V.

[illegible]

IN the next place, it is incumbent on the plaintiff in error to see that the writ, or the want of it, will [illegible] error in the payment of costs in error, including the writ of error itself, or the record of the judgment, if he proceeds, except in suits against attorneys and members of parliament, by bill, it is not necessary.

In order to the issuing the original, a precipe must be made for the clerk of the county in which the venue is laid, thus:

Middlesex, to wit. *Let there issue* [illegible] *cost security to prosecute her* [illegible] *under sureties and safe pledges, Joan Gregory, late of Westminster, in the said county, widow, Manager, yeoman, Marshal of Middlesex at Westminster, upon seven days from the day of Easter, to shew, FOR* [illegible] *SUCH WHEREAS, the said John* [illegible] *on the ninth day of January in the year of our Lord 1776, at Westminster aforesaid, was* [illegible] *to be the King's sole of Great Britain, for* [illegible] *and* [illegible] *and* [illegible] *and attorney, before that time found*

Precipe for original.

Speciality.

[illegible] the plaintiff [illegible] the young [illegible] bearing [illegible] *Joan* [illegible]

---

† The full return of this [illegible] judgment is of

CHAP. V.

The Original Writ. *

IN the next place it is incumbent on the attorney for the defendant in error to sue out an original writ; or the want of it will subject his client either to the payment of costs in error, including the writ of error itself, or to a reversal of the judgment, if he proceeds; except in suits against attornies and members of parliament by bill it is not necessary.

In order to the issuing this original, a precipe must be made for the cursitor of the county in which the *venue* is laid, thus:

Precipe for original.

Middlesex, to wit. If *Ann Hook* shall give you security to prosecute her suit, then put under sureties and safe pledges, *John Gregory*, late of *Westminster*, in the said county of *Middlesex*, yeoman, that he be before our justices at *Westminster*, * in fifteen days from the day of *Easter*, to shew, FOR THAT WHEREAS, the said *John* on the 1st day of *January* in the year of our Lord 1779, at *Westminster* aforesaid, was indebted to the said *Ann* in 30 *l.* of lawful money of *Great Britain*, for *meat, drink, washing, lodging and necessaries, care, skill, diligence, and attendance, before that time found*

Special declaration for the education of a young lady at a boarding School, by J. Lane, Esq;

* The first return of that term judgment is of.

* The attorney for deft in error shall [illegible] as
Atty for Pltf in error for consent [illegible]

and provided for, and employed and bestowed on Mary Gregory *the daughter of the said* John, *at his the said* John's *special instance and request*; and being so indebted the said *John* in consideration thereof, afterwards, (to wit) on the same day and year aforesaid, at *Westminster* aforesaid, undertook and then and there faithfully promised the said *Ann* to pay her the said sum of money whenever afterwards he the said *John* should be thereto requested. AND WHEREAS ALSO, the said *John* afterwards, (to wit) on the same day and year aforesaid, *at Westminster* aforesaid, in consideration that the said *Ann*, at the special instance and request of the said *John*, had before that time *found and provided for, and employed and bestowed on, the said* Mary Gregory, *the daughter of the said* John, *other meat, drink, washing, lodging, and necessaries, and other care, skill, diligence and attendance:* undertook and then and there faithfully promised the said *Ann* to pay her so much money as she therefore reasonably deserved to have of the said *John*, whenever afterwards he the said *John* should be thereto requested. And the said *Ann* avers, that she therefore reasonably deserved to have of the said *John* other 30 *l.* of like lawful money, that is to say, at *Westminster* aforesaid, whereof the said *John* afterwards (to wit) on the same day and year aforesaid there had notice. AND WHEREAS ALSO the said *John* afterwards to wit, on the same day and year aforesaid, at *Westminster* aforesaid, was indebted to the said *Ann* in other 30 *l.* of

like

like lawful money, for *work* and *labour* before that time done and performed by the ſaid *Ann* for the ſaid *Mary Gregory*, the daughter of the ſaid *John*, *in inſtructing and teaching the ſaid* Mary *the* French *and* Engliſh *tongues*, *muſick*, *dancing*, *writing*, *accompts*, *needle-work*, *and good manners and behaviour*, at his the ſaid *John*'s ſpecial inſtance and requeſt: and being ſo indebted, the ſaid *John*, in conſideration thereof, afterwards (to wit) on the ſame day and year aforeſaid, at *Weſtminſter* aforeſaid, undertook and then and there faithfully promiſed the ſaid *Ann* to pay her the ſaid laſt mentioned ſum of money whenever afterwards he the ſaid *John* ſhould be thereto requeſted. AND WHEREAS ALSO the ſaid *John* afterwards, (to wit) on the ſame day and year aforeſaid, at *Weſtminſter* aforeſaid, in conſideration that the ſaid *Ann*, at the ſpecial inſtance and requeſt of the ſaid *John*, had before that time *done and performed other work and labour for the ſaid* Mary Gregory, *the daughter of the ſaid* John, *in inſtructing and teaching the ſaid* Mary *the* French *and* Engliſh *tongues*, *muſick*, *dancing*, *writing*, *accompts*, *needle-work*, *and good manners*, *and behaviour:* undertook and then and there faithfully promiſed the ſaid *Ann*, that he the ſaid *John* would well and truly pay to the ſaid *Ann* ſo much money as ſhe therefore reaſonably deſerved to have of the ſaid *John*, whenever afterwards he the ſaid *John* ſhould be thereto requeſted: and the ſaid *Ann* avers, that ſhe therefore reaſonably deſerved

deſerved to have of the ſaid *John* other 30*l.* of like lawful money, that is to ſay, at *Weſtminſter* aforeſaid; whereof the ſaid *John* afterwards, (to wit) on the ſame day and year aforeſaid, there had notice. AND WHEREAS ALSO the ſaid *John* afterwards, (to wit) on the ſame day and year aforeſaid, at *Weſtminſter* aforeſaid, was indebted to the ſaid *Ann* in other 30*l.* of like lawful money, *for diverſe goods, wares, and merchandiſes, before that time bargained and ſold by the ſaid* Ann *to the ſaid* John, *and delivered to the ſaid* Mary Gregory, *the daughter of the ſaid* John, *at his ſpecial inſtance and requeſt.* And being ſo indebted the ſaid *John* in conſideration thereof afterwards (to wit) on the ſame day and year aforeſaid, at *Weſtminſter* aforeſaid, undertook and then and there faithfully promiſed the ſaid *Ann* to pay her the ſaid laſt mentioned ſum of money, whenever afterwards he the ſaid *John* ſhould be thereto requeſted. AND WHEREAS ALSO the ſaid *John* afterwards, (to wit) on the ſame day and year aforeſaid, at *Weſtminſter* aforeſaid, in conſideration that the ſaid *Ann*, at the ſpecial inſtance and requeſt of the ſaid *John*, *had before that time bargained and ſold to the ſaid* John, *and delivered to the ſaid* Mary Gregory, *the daughter of the ſaid* John, *diverſe other goods, wares, and merchandiſes:* undertook and to the ſaid *Ann* then and there faithfully promiſed, that he the ſaid *John* would well and truly pay to the ſaid *Ann* ſo much money as the ſaid laſt mentioned

goods

goods, wares, andmerchandiſes, at the time of the ſale and delivery thereof, were reaſonably worth, whenever afterwards he the ſaid *John* ſhould be thereto requeſted; and the ſaid *Ann* in fact ſaith that the ſaid laſt mentioned goods, wares, and merchandiſes, at the time of the ſale and delivery thereof, were reaſonably worth other 30 *l.* of like lawful money, that is to ſay, at *Weſtminſter* aforeſaid, whereof the ſaid *John* afterwards, (to wit) on the ſame day and year aforeſaid, there had notice. AND WHEREAS ALSO the ſaid *John* afterwards, (to wit) on the ſame day and year aforeſaid, at *Weſtminſter* aforeſaid, was indebted to the ſaid *Ann* in the further ſum of 30 *l.* of like lawful money, FOR money before that time paid, laid out, and expended *by the ſaid* Ann *for and to the uſe of the ſaid* John, at his ſpecial inſtance and requeſt; and being ſo indebted, the ſaid *John* in conſideration thereof afterwards, (to wit) on the ſame day and year aforeſaid, at *Weſtminſter* aforeſaid, undertook and then and there faithfully promiſed the ſaid *Ann* to pay her the ſaid laſt mentioned ſum of money, whenever afterwards he the ſaid *John* ſhould be thereto requeſted. AND WHEREAS ALSO the ſaid *John* afterwards, (to wit) on the ſame day and year aforeſaid, at *Weſtminſter* aforeſaid, was indebted to the ſaid *Ann* in the farther ſum of 30 *l.* of like lawful money, FOR *money before that time lent and advanced by the ſaid* Ann *to the ſaid* Mary Gregory, *the daughter of the*

the said John, *at his special instance and request*; and being so indebted, the said *John* in consideration thereof afterwards, (to wit) on the same day and year aforesaid, at *Westminster* aforesaid, undertook and then and there faithfully promised the said *Ann* to pay her the said last mentioned sum of money whenever afterwards he the said *John* should be thereto requested. NEVERTHELESS the said *John*, not at all regarding his said several promises and undertakings, in form aforesaid made, but contriving and fraudulently intending to deceive and defraud the said *Ann* in this behalf, hath not paid to the said *Ann* the said several sums of money, or either of them, or any part thereof, (although the said *John* afterwards, (to wit) on the same day and year aforesaid, and often since at *Westminster* aforesaid, hath been requested by the said *Ann* to pay her the same,) but to pay the same to the said *Ann* he the said *John* hath hitherto altogether refused, and still doth refuse, *and the same are still unpaid*: to the damage of the said *Ann* of 40*l.* *as it is said.*

Indorse the attorney's name on the original writ when made out.

Lord Clarendon's orders in chancery.

Unless the original writ is issued before the expiration of the *vacation* next following that term which the judgment is of, the cursitor has no authority to sue it out afterwards, without an order from the master of the rolls; to obtain which the plaintiff in the original action

The Law and Practice

the said John, at and for divers sums and [illegible]
days, and being indebted, the said John
in consideration thereof afterwards, (to wit)
on the same day and year aforesaid, at N. aforesaid, undertook and then and there faithfully promised the said Ann to pay her the said last mentioned sum of money whenever afterwards he the said John should be thereunto requested. NEVERTHELESS *the said John, not at all regarding his said several promises and undertakings, so made as aforesaid, but contriving and fraudulently intending to deceive and defraud the said Ann in this behalf, hath neglected to pay the said Ann the said several sums of money, or any part thereof, (although the said John afterwards, (to wit) on the same day and year aforesaid, at aforesaid, hath been requested by the said Ann to pay her the same,) but to pay the same to the said Ann he the said John hath hitherto, altogether refused, and still doth refuse, and the same are still unpaid to the damage of the said Ann of 40l. as she saith.*

Indorse the attorney's name on the original writ where made out.

Unless the original writ is issued before the expiration of the session next following the term in which the judgment is of, the court has no authority to issue it out afterwards without leave or from the matter of the record in which case the plaintiff in the original

action must present a petition to his honour, who will order it to be so upon payment of costs: and as the *vacation* between *Easter* term and *Trinity* term is the shortest of all the *vacations*, no time should be lost then, above all others, in doing this business, if the judgment is of *Easter* term, to avoid the consequences attendant upon the neglect thereof.

In Chancery.

Ann Hook *plaintiff.*
Between *and*
John Gregory *defendant.*

To the right honourable the master of the rolls.

The humble petition of the plaintiff

Sheweth,

That your petitioner having commenced an action at law, in his majesty's court of *Common Pleas*, at *Westminster*, against the above named defendant, in a plea of trespass upon the case; in which the *venue* is laid in *Middlesex*: your petitioner in *Easter* term last, obtained final judgment in the said action, for 28*l.* 10*s.*; whereupon the said defendant brought a writ of error returnable on the morrow of the *Holy Trinity*, but no further proceedings have been had.

Petition to the master of the rolls.

That

That inasmuch as it is necessary that an original writ should be sued out of his majesty's high court of chancery to warrant the said proceedings; and the time for applying for the same in the ordinary course being expired; the cursitor of *Middlesex* has not now authority to issue the said writ without your honour's order for that purpose.

30th *May* 1779.

Be it so, and let the petitioner pay the defendant his costs in error, in case the defendant does not, after having had notice of this order, farther prosecute his said writ of error; and hereof give notice forthwith.

THO. SEWELL.

Your petitioner therefore humbly prays your honour to grant an order for the cursitor of *Middlesex*, to issue an original writ in the above cause, out of his majesty's high court of chancery, returnable in his majesty's court of *Common Pleas*, in 15 days from the day of *Easter* last past.

And your petitioner shall ever pray, &c.

A copy of this petition and order must be served on the adverse attorney, pursuant to the master of the rolls's order, otherwise it will be contempt: after allowing the attorney two or three days to make his election whether to accept the costs in error or to prosecute the suit; if he declines to do so sooner, tender the costs in error; if he accepts thereof, then you are at liberty to nonpross the writ of error and proceed on the judgment directly: in order

where

whereto, go to the clerk of the errors, who will enter the nonprofs on the roll, thus:

Forafmuch as the faid *John Gregory* hath not profecuted the writ of error brought by him in this caufe the faid *Ann Hook* is at liberty to fue out execution, *&c.* *

Form of nonprofling writ of error.

S. Hough,
Clerk of the errors.

Pay 6 *s.* 8 *d.* for entering this nonprofs.

But if the attorney refufes to receive the cofts, and fays he will profecute the writ of error, he abandons the cofts to which he would have been intitled by a contrary conduct, and you muft in that cafe deliver the petition, and order thereon, to the curfitor, who will complete the original; as foon as you get fame from him, take it to the fheriff's office to be returned, for which pay one fhilling. The fheriff indorfes the return in this manner:

" *Pledges to profecute* { John Doe *and* Richard Roe.

* There are no cofts allowed to the defendant in error on nonpofs *before* tranfcript in any court. See chapter the laft.

" The

The return. "*The within named* John Gregory *hath not*
"*any thing in my bailiwick whereby he can*
"*be attached.*

"*The answer of* Robert Peckham *Esq*; *and* Richard Clark *Esq*; } *sheriff.*

When the original is returned in this manner, it must then be taken to and finally filed with the *custos brevium* of the *Common Pleas*, which is the last thing to be done with it: his office is in *Brick Court* in the *Temple*; pay 5 s.

Unless the original be filed with the *custos brevium before* errors are assigned, the plaintiff in error may assign the want of an original for error, which will subject the defendant in error to the inconveniences before mentioned.

CHA

CHAP. VI.

The transcript.

HAving in the last chapter entirely completed the business of the original writ, we shall now move on with the suit to it's next stage, which is what is called *transcribing*, or *certifying* the *record*,

Writs of error are returnable either the first or last return day in term: on the return day the clerk of the errors will grant a rule for the plaintiff in error to certify the record in eight days: pay for it 4 *s.* and if the writ of error is returnable the first return of the term this rule may be had on the *essoin* day of the term; serve a copy on the attorney on the other side: who before the eight days expire, generally leaves a guinea in part of the transcript money: and pays the rest in due time, to prevent a nonpros.

Hooke *and* Gregory.

The rule to certify record.

UNLESS the plaintiff in the writ of error brought in this cause certifies the record into the court of King's Bench, *within eight days next after notice hereof to be given to him or his attorney, a nonsuit will be entered.*

S. Hough,
Clerk of the errors.

At or before the ſervice of this rule, the attorney for the defendant in error muſt cauſe the proceedings in the original action, as far as the plea, or interlocutory judgment, to be entered on the roll in a ſtrong plain hand: in the *Common Pleas*, the warrants of attorney are filed on parchment at the *Warrant of Attorney Office*, in *Pump Court*, but never entered on the roll: they begin with the declaration at once, without writing any thing at all at the top, (*as the method is in* B. R.) not even the term, that being always put at the bottom by the prothonotaries.

When the roll is engroſſed take it to the clerk of the judgments, Mr. ~~Lickbarrow~~ Sherwin, whoſe office is in the *Common Pleas Office* on the left hand ſide of the *Prothonotaries*: it is his department to finiſh the roll by adding to it the *final* judgment from the *poſtea* on the record, or inquiſition taken on the writ of inquiry, both which he hath the cuſtody of. He will return back the roll in a day or two: pay nothing to him, his fees being taken care of by the prothonotaries when the final judgment is ſigned, in which they are always charged along with their own.

Take the roll (when done with by the clerk of the judgments) to the clerk of the errors to enable him to tranſcribe the record: which tranſcript, when ready, muſt be examined with the roll by the attorney for the defendant in error, who pays the clerk of the errors half a crown for the examination:

after

after which he delivers the roll to the defendant's attorney again, who shall then go to the *Prothonotaries' Office*, and docket the judgment, as the clerk will direct him; and finally leave the roll with them, or else with Mr. *Hobson*, the clerk of the office, in *Eton Court* in the *Temple*, to be by him taken into the *Treasury in the Exchequer-hall*: pay nothing on leaving the roll, except more than two terms are past since the judgment; then, 4*d.* 4*d.* for every whole one term since judgment, the roll must be left with the prothonotaries, who demand charge any thing.

If the writ of error is returnable the first return of the term, the clerk of the errors takes that whole term to make the transcript. If the last day of term, he takes all the vacation following.

When the transcript is ready (which must be paid for by the plaintiff in error) the clerk of the errors delivers it over to Mr. *Hobson*, with the writ of error annexed; of whom he takes a copy, which is called the paper-book, as it will be wanted in the future stages of the cause: it is made on unstamped paper; pay for same 4*d.* per folio.

after which he delivers the roll to the defendant's attorney again, who must then go to the *Prothonotaries Office*, and docket the judgment, as their clerks will direct him; and finally leave the roll with them, or else with Mr. *Bolton*, the clerk of the essoins, in *Elm Court* in the *Temple*, to be by him taken into the *Treasury* in *Westminster-hall:* pay nothing on leaving the roll, unless more than two terms are past since the judgment; then 3*s.* 4*d.* but if it is within one term after judgment, the roll may be left with the prothonotaries, who do not charge any thing.

If the writ of error is returnable the first return of the term, the clerk of the errors takes that whole term to make the transcript. If the last day of term, he takes all the vacation following.

When the transcript is ready (which must be paid for by the plaintiff in error) the clerk of the errors delivers it over to Mr. *Heberden*, with the writ of error annexed: of whom bespeak a copy, which is called the paper book, as it will be wanted in the future stages of the cause: it is made on unstamped paper; —pay for same 4*d.* *per folio.*

CHAP. VII.

In the King's Bench.

The scire facias, *quare executionem non.*

THE transcript of the record being delivered over by the clerk of the errors in the *Common Pleas* to *Mr. Heberden*, the proper officer for that purpose, the cause is then removed into the *King's Bench*, where all further proceedings must thereafter be had.

After the completion of the transcript (but not before) the *scire facias quare executionem non*, must be issued by the defendant in error.

The writ.

GEORGE *the third, by the grace of God of* Great Britain, France, *and* Ireland, *king, defender of the faith, &c. To the sheriffs of* Middlesex, *greeting. Whereas* Ann Hook *lately in our court before Sir* William de Grey, *knight, and his companions, our justices of the* Bench *at* Westminster, *by our writ, and by the judgment of the same court, recovered against* John Gregory, *late of* Westminster *in your county, yeoman,* 28l. 10s. *for her damages which she had sustained, as well by occasion of the said* John's *not having performed certain promisses and undertakings lately made by him to the said* Ann, *as for her costs and charges*

charges by her about her suit, in that behalf expended, whereof the said John *is convicted, as by the record and proceedings thereof, which we lately caused to be brought into our court, before us, for certain causes of error, manifestly appears. And now on the behalf of the said* Ann, *we have received information, that although the said judgment be given in form aforesaid, yet execution of the said damages still remains to be made to her, wherefore the said* Ann *hath intreated us to provide her a proper remedy in this behalf; and we, being willing that what is just should be done on this occasion, command you, that by honest and lawful men of your bailiwick, you make it known to the said* John, *that he be before us on the morrow of* All Souls, *wheresoever we shall then be in* England, *to shew if he has or knows of any thing to say for himself why the said* Ann *ought not to have her execution against him of the damages aforesaid, according to the force, form, and effect of the said recovery, if it shall seem expedient to him so to do, and further to do and receive what our said court before us shall consider of him in this behalf, and have you there the names of those by whom you shall make it known to him, and this writ: Witness* William *Earl of* Mansfield, *at* Westminster, *the* 23*d day of* June, *in the* 19*th year of our reign.*

Stormont and Way.

Error from an inferior court in which the proceedings are by bill, the *sci. fa.* and all subsequent proceedings must be returnable on

a day certain, except the palace court, from whence it is on a general return day.

If the transcript is completed the last day of term, the *sci. fa.* to bear *teste* the last day of that term, and to be returnable the first return of the subsequent term. If transcript is completed in the vacation, and delivered over the first day of term, the *sci. fa.* to bear *teste* the first day of that term.

Ingross *sci. fa.* on a ~~double twelve penny~~ 5/ stamped piece of parchment; to be signed by *Mr. Heberden*, and sealed. Make a precipe for *Mr. Heberden*, thus,

> Middlesex, *scire facias quare executionem non, for* Ann Hook, *defendant, at the suit of* John Gregory, *plaintiff in error, for* 28 l. 10 s. *damages in case.*
>
> Den.

If the writ of error is on a judgment of an inferior court, the *sci. fa.* must be directed to the judges thereof, thus—*To the mayor and bailiffs of the town of* Northampton, *greeting. Whereas* Ann Hook, *lately in our court of the town aforesaid, before you, without our writ, &c. command you, that by good and lawful men of the bailiwick of the town aforesaid, you make known to the said John, that he be before us on the morrow of* All Souls, *wheresoever, &c.* All the rest to be the same as in the foregoing.

Pay

of Clerks of Court.

Pay for signing 1 s. 8 d. sealing 7 d. then take it to the sheriff's office for a warrant, which is the best way to have served, as it saves the delay of an *alias fa. fa.*

Of course if *non est inventus* is returned thereon, give a rule for judgment at the return of the *fa. fa.*

But if two writs issue with *nihil* returned, the rule for judgment must not be given until the return of the *alias scire facias.* (no rule on the *fieri.*)

In the King's Bench.

John Gregory *plaintiff,*
and
Ann Hook *defendant.*
} *In error.*

Rule for judgment.

Rule for judgment on a scire fac as quare executionem non.

D. S. *attorney.*
4th November, 1779.

This rule is to be given at Mr. C. W. the clerk of the rules, in *Serjeant's Inn,* pay 4s. 8d. and it expires in four days.

Indeed this rule on the *fieri fa.* must as we conceive be omitted, as much depends upon it, for if the plaintiff in error assigns no errors at or before it's expiration, the defendant is at his liberty to sue out and levy execution the first day after the rule is out, without proceeding, or leaving any rule for an assignment.

D 4 [illegible]

Pay for ſigning 1 *s.* 8 *d.* ſealing 7 *d.* then take it to the ſheriffs office for a warrant, which it is the beſt way to have ſerved, as it ſaves the delay of an *alias ſci. fa.*

Of courſe if *ſcire feci* is returned thereon, give a rule for judgment at the return of the *ſci. fa.*

But if two writs iſſue with *nihils* returned, the rule for judgment muſt not be given until the return of the *alias ſcire facias.* (no rule on the firſt.)

Rule for judgment.

In the King's Bench.

John Gregory *plaintiff,*
and
Ann Hook *defendant.* } *In error.*

Rule for judgment on a ſcire facias quare executionem non.

Den, *attorney.*
4th November, 1779.

This rule is to be given at *Mr* C[illegible] and, the clerk of the rules, in *Symond's Inn,* pay 1 *s.* 3 [illegible]. it expires in four days.

Indeed this rule on the *ſci. fa.* muſt on no account be omitted, as much depends upon it; for if the plaintiff in error aſſigns not errors at or before it's expiration, the defendant is at full liberty to ſue out and levy execution the next day after the rule is out, without demanding, or ſerving any rule for an aſſign-

ment of error. The end of the *sci. fa.* is to warn him to shew why there should not be execution of the judgment: the assignment of errors is understood to be the cause shewn why execution ought not to be suffered; which assignment of errors therefore must be ready to be delivered against the time the rule on the *sci. fa.* expires; otherwise it is supposed he submits to the condition, and there is no relief if the execution once *regularly* issues.

CHAP.

I whether any service
means any

CHAP. VIII.

The assignment of errors.

IF the defendant in error should levy execution in default of an assignment of errors, he has then no costs in error, but he may afterwards proceed to *nonpross* the writ of error (notwithstanding the levy of the execution) and recover costs: which must be done just in the same manner as if execution had *not* been levied: thus,

Get a rule from ~~Mr. Benton~~ the master, at the *King's Bench* office, to assign *errors on record*, enter same at ~~Mr. Cowpers~~ the office of the rules, serve a copy on the attorney on the other side, and if no errors be assigned in due time, the defendant may sign *nonpross*, and have costs. 3 *H.* VIII.

Hook *and* Gregory.

Rule to assign errors.

Monday on the morrow of Saint Martin, *to assign errors on record.*

Entered.

The plaintiff in error being served with this rule, he may assign error if he thinks proper, although the execution should (or should not) have been *executed*: and if the errors assigned have foundation sufficient to reverse the judgment, he shall have either restitution of the damages

damages (if levied) or a reversal of the judgment, if the damages were not levied.

If the plaintiff in error delivers no assignment of errors, at or before the expiration of the rule to do so, the defendant must enter the *sci. fa.* on the roll (to follow the transcript) and sign judgment thereon at the *King's Bench* office, and sue out execution.

If only one *sci. fac.* with *scire feci* returned thereon, the rolls and entry must be of the same term which the *sci. fa.* is of; if two issue, then of that term which the first *sci. facias* is of, with an award of the second, and of execution, in this manner;

The entry of *a* nonpros *after* scire facias quare executionem non, *in error for want of assigning error.*

Afterwards, (to wit,) on *Monday next after eight days of Saint Martin,* in this same term, before our lord the king at *Westminster,* comes the said *Ann,* by her attorney aforesaid, and says that execution of the judgment aforesaid still remains to be made unto her; therefore she prays the writ of the lord the king, to be directed to the sheriff of the county of *Middlesex* aforesaid, that he make known to the said *John,* to be before the said lord the king, wheresoever, *&c.* to shew if any thing he has or knows to say for himself why the said *Ann* ought not to have execution of her damages, costs and charges aforesaid, according to the form and effect of the judgment aforesaid,

aforesaid, and it is granted to her, *&c.* by which it is commanded to the sheriff aforesaid that by good and lawful men of his bailiwick he make it known to the said *John* that he be before the lord the king, (*the return of the* scire facias quare, *&c.*)

Wheresoever, *&c.* to shew in form aforesaid, if *&c.* and further, *&c.* the same day is given to the said *Ann &c.* at which day the said *Ann*, by her attorney aforesaid, comes before our lord the king at *Westminster*, and offers herself against the said *John*, in the plea aforesaid, and the sheriff (to wit) *Thomas Wright*, *Esq*; and *Evan Pugh*, *Esq*; sheriff of the said county of *Middlesex*, returns *, that by virtue of the said writ to him directed, by *James Strongarm* and *William Chariot*, good, *&c.* he has given notice to the said *John* to appear, *&c.* to shew cause, *&c.* as by that writ he was required: and the said *John*, being solemnly called, doth *Scire feci.*

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* *Two nihils* — that the said *John* hath not any thing in his bailiwick where or by which he can give him notice, as by that writ he was commanded, nor is the said *John* found in the same, and the said *John*, being solemnly called, doth not come. Therefore as before the said sheriff is commanded, that by good, *&c.* he make known to the said *John*, that he be before our lord the king, (*the return of the second* scire facias quare executionem non.)

Wheresoever, *&c.* to shew in form aforesaid, if, *&c.* and further, *&c.* the same day is given to the said *Ann*, there, *&c.* At which day the said *Ann* by her attorney aforesaid, comes before our lord the king at *Westminster*, and offers herself against the said *John*, and the sheriff, as before, returns that the said *John* hath not any thing, *&c.* nor is the said *John* found, and the said *John*, being solemnly called, doth not come.

not

not come, but makes default; and hereupon the said *Ann* says, that the said *John* hath assigned no error or errors in the record and proceedings aforesaid, or in giving the judgment aforesaid: therefore a day is given to the parties aforesaid, to come before our lord the king, on *Monday on the morrow of Saint Martin*, wheresoever, *&c.* that is to say, for the said *John* to assign error or errors in the record and proceedings aforesaid, or in giving the judgment aforesaid. At which day, before our lord the king at *Westminster*, comes the said *Ann*, by her attorney aforesaid, and the said *John*, being solemnly called, doth not come, but again makes default, nor has he farther prosecuted the said writ of error against the said *Ann*. Therefore it is considered, that the said *Ann* do recover against the said *John*, as well her damages aforesaid, as also 7 *l.* adjudged to her by the court of our lord the king now here, according to the form of the statute in such case made and provided, for her damages, costs, and charges which she has sustained by occasion of the delay of execution of the judgment aforesaid, by means of the prosecution of the said writ of error, which damages, in the whole, amount unto 35 *l.* 10 *s.* and that the said *Ann* have execution thereof, *&c.* and the said *John*, in mercy, *&c.*

Day given to assign errors.

Plaintiff in error makes default.

Judgment signed day of 1779.

Mercy.

Few parties, however, after sustaining the expence of transcribing, will be found to stop short at this part of the journey they have begun, and especially if real error should exist; but instead thereof will deliver an assignment of

Leave out this 6 Term
Rep: 367

of errors to prevent these advantages being taken of them. Therefore we shall now give the different forms of such assignments as are now in use, as well as of the other pleadings; including the forms of the affirmance, reversals, *&c.*

The assignment of errors, that there is no *original writ filed of record.*

In the King's Bench.

Michaelmas term, in the 20th year of the reign of king *George* the third.

Gregory against *Hook.* } **Afterwards,** (that is to say,) *on Monday on the morrow of Saint* Martin, in this same term, before our lord the king at *Westminster*, comes the said *John Gregory*, by *Richard Fen* his attorney, and says, that in the record and proceedings aforesaid, and also in the giving of the judgment aforesaid, there is manifest error in this, (to wit,) *that the declaration aforesaid, and the matters therein contained*, are not sufficient in law for the said *Ann* to have and maintain her aforesaid action thereof against the said *John*. There is also error in this, (to wit) that by the record aforesaid, it appears, that the said *John* was *attached* to answer to the said *Ann* in the plea aforesaid, *yet no original writ* between the parties aforesaid, in the plea aforesaid, is filed of record, nor remains of record, in the said court of the said lord the king of the *Bench*, at *Westminster* aforesaid:

ſaid: therefore in that there is manifeſt error. There is alſo error in this, that it appears by the record aforeſaid, that the judgment aforeſaid, in form aforeſaid given, was given *for* the ſaid Ann *againſt* the ſaid *John:* whereas by the law of the land the ſaid judgment ought to have been given *for* the ſaid John *againſt* the ſaid Ann. *And the ſaid* John *prays a writ of the lord the king, to be directed to the* cuſtos brevium *of the ſaid court of the* Bench *at* Weſtminſter, to certify to the ſaid lord the king the truth of the ſame, and it is granted to him, *&c.* and the ſaid *John* prays that the judgment aforeſaid, for the errors aforeſaid, and other errors in the record and proceedings aforeſaid, may be reverſed, annulled, and altogether held for nothing, and that he may be reſtored to all things which he hath loſt by occaſion of the ſaid judgment, *&c.*

A. CHAMBRE.

This aſſignment of errors muſt be ſigned by counſel, and engroſſed on a treble penny ſtamp, and delivered (not left in the office) to the attorney for the defendant in error.

The plaintiff in error inſtead of the above may aſſign the want of a warrant of attorney, or any other error that may really exiſt in the judgment or proceedings; and if there is no real error to be diſcovered, he can aſſign what are called the *general errors*, which is the cheapeſt way of proceeding for the client.

We

P

We ſhall firſt go on with the joinder in error to this aſſignment, as to the want of an *original writ*, and when that is done with, and the judgment affirmed, we ſhall ſuperadd other uſeful precedents of different aſſignments of error; *viz.* one aſſigning the want of a warrant of attorney, and others conſiſting of the general errors. Likewiſe aſſignments of error in parliament, and other ſpecial matters, to make our work as extenſive as poſſible, will be found in their proper places. But previous to the joinder in error the matters contained in the next chapter muſt be properly diſcuſſed.

CHAP.

CHAP. IX.

The writ of certiorari.

IT lies on the defendant to force the plaintiff to return the writ of *certiorari*, which is to be done in this manner:

Mr. *Benton*, at the *King's Bench* office, will, on the back of the draught of the *scire facias quare executionem non*, give a rule to return the *certiorari*, which must likewise be entered with the clerk of the rules, and served in the same manner as the rule for assigning errors was done.

Hook *and* Gregory.

Monday in eight days of Saint Martin to return the writ of certiorari.

Entered.

The plaintiff in error, on service of this rule, must make out the *certiorari*, and leave it with the *custos brevium* of the *Common Pleas*. The writ, together with the return made by the *custos brevium*, are to be taken to Mr. *Way's* office in *Portugal Street*, or, if in term time, left in the *King's Bench* treasury, *Westminster-hall*.

The defendant's attorney searches for it there, and, if returned, bespeaks a copy of the writ and return, which is made on a double six-penny stamp.

The

The certiorari to certify the original writ.

GEORGE the third, by the grace of God, of *Great Britain*, *France*, and *Ireland*, king, defender of the faith, *&c.* To our right trusty and well beloved *John Browning*, *Esq*; *Sir Robert Eden*, *Bart. Frederick Young*, *and Edward Gore*, *Esqs*; holding the office of keeper of the writs, rolls, and records, of our court of the *Bench*, greeting: We being willing, for certain causes, to be certified, whether any *original writ*, between *Ann Hook*, and *John Gregory*, *late of Westminster*, *in the county of Middlesex*, *yeoman*, in a plea of trespass on the case, be filed in your custody or not; do command you, that you search our *original writs*, directed to the sheriff of *Middlesex*, and which are filed of record in your custody, of *Easter term*, *in the* 19*th year of our reign.* And what you shall find therein of an original writ, between the parties aforesaid, of the plea aforesaid, you certify to us without delay, wheresoever we shall then be in *England*, together with the return and indorsement thereof, as fully as the same remains in your custody, and this writ. Witness *William Earl of Mansfield*, at *Westminster*, the 6th day of *November*, in the 20th year of our reign.

Stormont and *Way.*

The answer of John Browning, *Esq*; *Sir* Robert Eden, *Bart.* Frederick Young, *and* Edward Gore, *Esqs*; *holding the office of keeper of the writs, rolls, and records within named.*

" By virtue of this writ to us directed, we " do hereby certify to the lord the king with- " in named, that we have searched the origi- " nal writs directed to the sheriff of *Middle-* " *sex*, that are in our custody, filed of record, " of *Easter term, in the* 19*th year* of the reign " of the said king; *and that there is an origi-* " *nal writ* between the parties within-named, " in a plea of trespass on the case, directed " to the sheriff of *Middlesex*, in our custody, " filed of record, of the term aforesaid: the " tenor of which said original writ, with " the return and indorsement thereof, as fully " as the same remains in our custody, filed " of record, we do hereby certify to the said " lord the king, as appears by the schedule " hereunto annexed, as we are within com- " manded ".

Here follows *verbatim*, a copy (*fac simile*) of the original writ which was made out by the cursitor, and the indorsement thereon made by the sheriff, as filed with the *custos brevium* in Chap. V.

If the *certiorari* is not returned and filed by the time appointed by the rule, the defendants may join in error, by pleading *in nullo est erratum*, and enter a *non misit breve* on record,

cord, without taking any notice of the deminution; and the assignment of error, is void.

If a wrong original is certified, or that there is no original, the defendant may suggest before in *nullo est erratum* pleaded, that there is an original of another term, *viz. Michaelmas*, or *Hilary*: when a *certiorari* issues to the *custos brevium* to certify same, and another to the chief justice of the *Common Pleas* to certify the continuances.

1 Cr. 271. 281. 2 Cr. 185. 479. 654. 674.

If a *wrong* original is certified of the same term the *placita* is of, the defendant may suggest there is a *right* original, even of the same term; and when both are before the court, they will apply the record to that which is right.

Hard. 200.

CHAP. XI.

The joinder in error.

In error.

Michaelmas term *in the* 20th *year of the reign of king* George *the third.*

Stormont *and* Way.

Hook and *Gregory.* } *WHICH* ſaid writ of *certiorari*, ſo prayed and granted, follows in theſe words, to wit, *George* the third, by the grace of God, of *Great Britain*, *France*, and *Ireland*, king: (*proceed* verbatim *with the writ of* certiorari, *in* CHAP. IX, *to the end*, Stormont *and* Way.) which ſaid keeper of the writs, rolls, and records, returned and certified unto our ſaid lord the king, that by virtue of the ſaid writ of *certiorari*, they had ſearched the original writs, directed to the ſheriff of *Middleſex*, in their cuſtody, filed of record, of *Eaſter* term, in the nineteenth year of the reign of our ſaid lord the king, *and that there was an original writ between the parties in the ſaid writ of* certiorari *named*, in a plea of treſpaſs on the caſe, directed to the ſheriff of *Middleſex*, in their cuſtody, filed of record, of the term aforeſaid; the tenor of which ſaid original writ, together with the return and indorſement thereof, as fully as the ſame remained in their cuſtody, filed of record, they the ſaid keeper of the writs, rolls, and records aforeſaid, thereby certified to the ſaid lord the king,

Verifying the original writ.

ting, as appeared by the schedule thereunto annexed; as the said keeper was in the said writ of *certiorari* commanded. And which said schedule, is annexed to the said writ of *certiorari*, follows in these words, to wit, "George the third, by the grace of God, of Great Britain, France, and Ireland, king, defender of the faith, &c. To the sheriff of *Middlesex* greeting. If *Ann Hook* shall give you security to prosecute her suit, then put under pledges and safe pledges, *John Gregory*, late of *Westminster*, in your county, yeoman, that he be before our justices at *Westminster*, in fifteen days from the day of *Easter*, to shew, For that whereas (go on with the original writ in Latin, to the end, then add the sheriff's indorsement, viz.) Pledges to prosecute, *John Doe*, and *Richard Roe*; the within named *John Gregory* hath not any thing in my bailiwick whereby he can be attached. the answer of *Henry Peckham*, esq. and *Richard Clark* esq. sheriff, *Des. Attorney*. Which said writ of *certiorari*, together with the return of the same, among the records without day, of *Easter* term aforesaid, is filed. And hereupon afterwards, to wit, *Saturday* next after eight days of *St. Martin*, in *Michaelmas* term, in the twentieth year of the reign of the said lord the king, the said *Ann Hook*, by *John* her attorney, freely comes here into court, and says, that there is no error either in the record and proceedings aforesaid, or in giving the judgment aforesaid; and the prayer of the court of the said lord the king, now here, may proceed to examine, as well the record and proceedings aforesaid, as the man-

king, as appeared by the ſchedule thereunto annexed: as the ſaid keeper was in the ſaid writ of *certiorari* commanded. And which ſaid ſchedule, ſo annexed to the ſaid writ of *certiorari*, follows in theſe words, to wit; *George* the third, by the grace of God, of *Great Britain*, *France*, and *Ireland*, king, defender of the faith, *&c.* To the ſheriff of *Middleſex* greeting. If *Ann Hook* ſhall give you ſecurity to proſecute her ſuit, then put under ſureties and ſafe pledges, *John Gregory*, late of *Weſtminſter*, in your county, yeoman, that he be before our juſtices at *Weſtminſter*, in fifteen days from the day of *Eaſter*, to ſhew, For that whereas (*go on with the original writ in* CHAP V. *to the end, then add the ſheriff's indorſement*, viz.) Pledges to proſecute, *John Doe*, and *Richard Roe*; the within named *John Gregory* hath not any thing in my bailiwick whereby he can be attached; the anſwer of *Robert Peckham*, eſq; and *Richard Clark* eſq; ſheriff, *Den. Attorney*. Which ſaid writ of *certiorari*, together with the return of the ſame, among the records without day, of *Eaſter* term aforeſaid, is filed. And hereupon afterwards to wit, *Saturday* next after eight days of *St. Martin*, in *Michaelmas* term, in the twentieth year of the reign of the ſaid lord the king, the ſaid *Ann Hook*, by *John Den* her attorney, freely comes here into court, and ſays, that there is no error either in the record and proceedings aforeſaid, or in giving the judgment aforeſaid, and ſhe prays that the court of the ſaid lord the king now here, may proceed to examine, as well the record and proceedings aforeſaid, as the mat-

ters aforesaid for error assigned, and that the judgment aforesaid, in form aforesaid given, may be in all things affirmed. But because the court of the said lord the king now here is not yet advised what judgment to give of and upon the premisses, a day is given therefore to the parties aforesaid, to come before the said lord the king on * wheresoever the said lord the king shall then be in *England*, to hear the judgment aforesaid, for that the court of the said lord the king now here is not yet advised thereof, *&c.*

Continuance.

W. Baldwin.

After the argument, the judgment of the court, either for affirmance or reversal, must be entered up upon the rolls, to follow the joinder in error, in this place. For forms thereof see the end of the next chapter, and the index.

This joinder in error must be engrossed fair on treble penny stamps, signed by counsel, and delivered to the attorney for the plaintiff in error, who is to be paid a fee of half a crown on the delivery.

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* The day mentioned in the rule for consilium.

CHAP.

CHAP. XII.

The Certiorari.

Counsel must then be employed to move for a *certiorari*.

Saturday *next after eight days* of St. Martin *in the* 26th *year of King* George *the* 3d.

Week } Thursday *next after eight days of* Rule for
Crown. } St. Martin *is appointed to hear certiorari.*
the counsel for both parties. Upon the motion of Mr. Baldwin,

BY THE COURT.

SERVE a copy of this rule on the opposite attorney. After which the whole proceedings in both courts are to be engrossed on *King's Bench* rolls, from the beginning to the end, which must be entered and docketed with the clerk of the judgments, in the *King's Bench Office*, and the rolls afterwards taken to Mr. *Aylin*, the clerk of the papers in *Ormond's Inn*, to be marked and entered for the argument; and then to be left with Mr. *Gray*, at his office, or else in the *King's Bench Treasury, Westminster-Hall*, ready to be produced in court.

On these *King's Bench* rolls the whole proceedings in both courts could be engrossed, as we have mentioned before. Imprimis, the writ of error with, engrossed the whole of

CHAP. XII.

The Consilium.

Counsel must then be employed to move for a *consilium.*

Saturday *next after eight days of* St. Martin *in the* 20th *year of king* George *the third.*

Hook } Thursday *next after eight days of* St. Martin *is appointed to hear the counsel for both parties. Upon the motion of* Mr. Baldwin, } Rule for consilium.
Gregory.

BY THE COURT.

SERVE a copy of this rule on the opposite attorney. After which the whole proceedings, in both courts, are to be engrossed on *King's Bench* rolls, from the beginning to the end, which must be entered and docketed with the clerk of the judgments, at the *King's Bench Office*; and the rolls afterwards taken to Mr. *Austen*, the clerk of the papers in *Symond's Inn*, to be marked and entered for the argument; and then to be left with Mr. *Way*, at his office, or else in the *King's Bench Treasury*, *Westminster-Hall*, ready to be produced in court.

On these *King's Bench* rolls the intire proceedings in both courts must be engrossed, as we have mentioned before. Begin with the writ of error first, engross the whole of

that, (*a copy whereof is delivered by* Mr. Heberden *with the copy of the transcript*,*) then follows the declaration in the *Common Pleas*, down to the final judgment inclusive in that court, (*a copy of which is also delivered by* Mr. Heberden.) In fact the whole paper book, as delivered by him, is to be ingrossed on the rolls to the end: then immediately go on, in a new line, with the assignment of errors, (*thus, afterwards, that is to say, on* Monday *on the morrow of* St. Martin, *as in* page 45 *to the end*) and lastly the joinder in error in CHAP. XI.) follows the assignment of errors, on the rolls, in the same manner, to the end of it. This completes the entries on the rolls, for the argument. At the top of the first roll write, as usual, *As yet of* Michaelmas *term* 1779. *Witness* William *earl of* Mansfield. But the warrants of attorney in this case are superfluous, the warrants being filed before in the other court, and this being only a continuation of the same action. Not that they will do any hurt if added, supposing the addition should be preferred—but either way will serve.

For the argument, two paper books, each containing a copy of the whole proceedings as entered on the rolls, must be made by the attorney for the plaintiff, and two more by the attorney for the defendant.

Rule Easter. 2 Jac. II.

The paper books were formerly delivered to the judges two days, but now must be

* See page 35.

delivered

delivered four days before the day of argument.

The plaintiff delivers paper books to the chief justice, and first puisne judge, and the defendant delivers them to the other judges. Rule Michaelmas, 17 Car. II.

Then a paper book for the counsel on each side with a suitable fee.

When the *certiorari* is returned and filed, and issue joined in *nullo est erratum*, either party may move for *consilium*, and set down the errors for argument with the clerk of the papers.

If these rules are not complied with, the judges will not hear the argument: wherefore the party, who expects the decision in his favour, should take care to deliver paper books to all the judges, in case the attorney on the other side should neglect to do so.

For directions (if a *non pros* is obtained before affirmance) as to signing judgment, and suing out execution—See Chapter the last.

Affirmance *to be entered on the roll after the argument.*

At which day before our lord the king at *Westminster*, come the parties aforesaid, by their attornies aforesaid: whereupon, as well the record and proceedings aforesaid, and the judgment given in form aforesaid, as the matters aforesaid, by the said *John*, above for error assigned, being seen and fully understood

ſtood, by the court of the ſaid lord the king now here, and mature deliberation had thereupon: for that it appears to the court of our ſaid lord the king now here, that there is no error, either in the record and proceedings aforeſaid, or in giving the judgment aforeſaid; **Therefore it is conſidered**, that the judgment aforeſaid, given in form aforeſaid, be in all things affirmed. **And it is further conſidered**, that the ſaid *Ann* do recover againſt the ſaid *John*, as well her damages aforeſaid, as alſo *fourteen pounds* adjudged to her by the court of our lord the king now here, according to the form of the ſtatute in ſuch caſe made and provided, for her damages, coſts, and charges, which ſhe has ſuſtained, by occaſion of the delay of execution of the judgment aforeſaid, by means of the proſecution of the ſaid writ of error; which ſaid damages, coſts, and charges, in the whole, amount unto forty two pounds, and ten ſhillings and that ſhe have execution thereof, *&c.* and the ſaid *John* in mercy, *&c.*

Judgment ſigned the day of 1780.

Mercy.

See *Index* for reverſals, and executions.

CHAP.

CHAP. XIII.

A judgment of errors that there is not any warrant of attorney.

AFterwards, to wit, on *Munday* on the morrow of St. Martin, in the same term, before our lord the king at *Westminster*, came the said *John Gregory*, by *Richard Fox* his attorney, and says, that in the record and proceedings aforesaid, and also in giving the judgment aforesaid, there is manifest error in this, to wit, that the declaration aforesaid, and the matters therein contained, and not sufficient in law for the said *Ann* to have her aforesaid action thereof maintained against him: then is also error in this, to wit, that by the record aforesaid it appears, that the judgment aforesaid, in form aforesaid given, was given for the said *Ann* against the said *John*; whereas by the law of the land, the said judgment ought to have been given for the said *John* against the said *Ann*: therefore in that there is manifest error. And the said *John* further says, that there is also error in this, to wit, that there is no warrant of attorney, nor of record, nor remains of record, in the said court of our said lord the king of the bench at *Westminster*, between the parties aforesaid, in the plea aforesaid, to warrant the said *Ann* to be attorney for the said *Ann*, against the said *John Gregory*, in the plea aforesaid: therefore that there is manifest error. And the said

John

tion, by the court of the said lord the king now here, and mature deliberation had thereupon; for that it appears to the court here, that the said lord the king now here, shall be to receive, either in the record and proceedings aforesaid, or in giving the judgment aforesaid, Therefore it is considered, that the judgment aforesaid, given in form aforesaid, be in all things affirmed. And it is further considered, that the said *Ann* do recover against the said *John*, as well her damages aforesaid, as also *fourteen pounds* sterling, to her by the court of our lord the king now here, according to the form of the statute in such case made and provided, for her damages, costs, and charges, which she has sustained, by occasion of the delay of execution of the judgment aforesaid, by means of the prosecution of the said writ of error; which said damages, costs, and charges, in the whole, amount unto forty two pounds, and ten shillings and six pence; to have execution thereof, and the said *John* in mercy, &c.

Judgment affirmed, 22d of 17[illegible].

Mary.

See *Jones* for reversible, and executors.

CHAP. XIII.

Assignment of errors that there is not any warrant of attorney.

AFterwards, to wit, on *Monday* on the morrow of St. *Martin*, in this same term, before our lord the king at *Westminster*, comes the said *John Gregory*, by *Richard Fen* his attorney, and says, that in the record and proceeding aforesaid, and also in giving the judgment aforesaid, there is manifest error in this, to wit, that the declaration aforesaid, and the matters therein contained, are not sufficient in law for the said *Ann* to have her aforesaid action thereof maintained against him: there is also error in this, to wit, that by the record aforesaid it appears, that the judgment aforesaid, in form aforesaid given, was given for the said *Ann* against the said *John*; whereas by the law of the land, the said judgment ought to have been given for the said *John* against the said *Ann:* therefore in that there is manifest error. And the said *John* further says that, there is also error in this, to wit, that there is no warrant of attorney filed of record, nor remains of record, in the said court of the said lord the king of the bench at *Westminster*, between the parties aforesaid, in the plea aforesaid, to warrant the said *John Den* to be attorney for the said *Ann*, against the said *John Gregory*, in the plea aforesaid: therein that there is manifest error. And the said

John

John prays a writ of the lord the king, to be directed to the chief justice of the said court of the bench, to certify to the said lord the king the truth of the same; and it is granted to him, *&c.* And the said *John* prays that the judgment aforesaid, for the errors aforesaid, and other errors in the record and proceedings aforesaid, may be reversed, annulled, and altogether held for nothing, and that he may be restored to all things which he hath lost by occasion of the said judgment, *&c.*

A. Chambre.

CHAP.

CHAP. XIV.

Covenant to certify warrants of attorney.

The form;

GEORGE the third, by the grace of God, of *Great Britain, France*, and *Ireland*, king, defender of the faith, &c. To our trusty and well-beloved *Sir William de* knight, our chief justice of the bench, greeting. We, being willing, for certain causes, to be certified, whether *John Doe*, gentleman, his attorney of record, against *John Gregory*, late of *Wel-* in the county of *Middlesex*, yeoman, of trespass on the case, before you and your companions, our justices of the aforesaid, by command you, that you the record, and other remembrance of warrants of attorney, for the county aforesaid, being in your custody, filed in the *Easter* term, in the nineteenth year of our reign: and what you shall find concerning the said warrants of attorney between the parties aforesaid, of the said, you certify to us without delay, whatever we shall then be in *England*, the time remains in your custody, with this writ. Witness *William* earl at *Westminster*, the 6th day of the 20th year of our reign.

Stewart and *Wey*.

[illegible] returned, and filed in the manner as the other warrants in the [illegible]

John prays a writ of the lord the king, to be directed to the chief justice of the said court of the bench, to certify to the said lord the King the truth of the same; and it is granted to him, &c. And the said *John* prays that the judgment aforesaid, for the errors aforesaid, and other errors in the record and proceedings aforesaid, may be reversed, annulled, and altogether held for nothing, and that he may be restored to all things which he hath lost by occasion of the said judgment, &c.

A. Cl

CHA

CHAP. XIV.

Certiorari to certify warrants of attorney.

The form:

GEORGE the third, by the grace of God, of *Great Britain*, *France*, and *Ireland*, king, defender of the faith, *&c.* To our right trusty and well-beloved Sir *William de Grey*, knight, our chief justice of the bench, greeting. We, being willing, for certain causes, to be certified, whether *Ann Hook* made *John Den*, gentleman, her attorney on record, against *John Gregory*, late of *Westminster*, in the county of *Middlesex*, yeoman, in a plea of trespass on the case, before you and your companions, our justices of the Bench aforesaid, do command you, that you search the records, and other remembrance rolls, of warrants of attorney, for the county of *Middlesex*, being in your custody, filed of record, of *Easter* term, in the nineteenth year of our reign: and what you shall find therein, concerning the said warrants of attorney, between the parties aforesaid, of the plea aforesaid, you certify to us without delay, wheresoever we shall then be in *England*, as fully as the same remains in your custody, together with this writ. Witness *William* earl of *Mansfield*, at *Westminster*, the 6th day of *November*, in the 20th year of our reign.

Stormont and *Way.*

This must be returned and filed in the same manner as the other *certiorari* in the ninth Chapter.

CHAP.

CHAP XV.

The joinder in error, that there is a warrant of attorney.

WHICH said writ of *certiorari*, so prayed and granted, follows in these words, to wit, *GEORGE* the third, by the grace of God, (*to the end of the writ of* certiorari *in the preceeding chapter*, Stormont *and* Way) which said chief justice of the bench aforesaid, returned and certified unto our said lord the king, that by virtue of the said writ of *certiorari*, he had searched the records, and other remembrance rolls, of the warrants of attorney, for the county of *Middlesex*, in his custody, filed of record, of *Easter* term, in the nineteenth year of the reign of our said lord the king, and that there was a warrant of attorney to warrant the said *John Den* to be attorney for the said *Ann*, against the said *John Gregory*, in the plea aforesaid, in his custody, filed of record, of the term aforesaid; the tenor of which said warrant of attorney, as fully as the same remained in his custody, filed of record, he the said chief justice thereby certified to the said lord the king, as appeared by the schedule thereunto annexed; as the said chief justice was in the said writ of *certiorari* commanded; which said schedule so annexed to the said writ of *certiorari* follows in these words, to wit, The rolls of attornies received before Sir *William*

[illegible] Gray, knight, chief justice of our lord [illegible] king, of the bench, and his companions, [illegible] Easter term, in the nineteenth year of the [illegible] of our sovereign lord George the third, [illegible] the grace of God, of *Great Britain, France,* [illegible] *Ireland,* king, defender of the faith, &c. [illegible] to wit, *Ann Hook* plaintiff in error [illegible] *John Ellis* her attorney, against *John* [illegible] *Ire* of *Middlesex* in the said county [illegible] *Middlesex,* defendant, in a plea of trespass on [illegible] case. Which said writ of *certiorari,* together with the return thereof, among the [illegible] records without day, of Easter term aforesaid, is filed. And hereupon afterwards, to [illegible], on *Saturday* next after eight days of St. [illegible], in the twentieth year of the reign of [illegible] said lord the king, the said *John Ellis,* by [illegible] attorney aforesaid, freely comes here into [illegible] court, and says, that there is no error either [illegible] the record and proceedings aforesaid, or in [illegible] the judgment aforesaid, and he prays [illegible] the court of the said lord the king now [illegible] may proceed to examine as well the record [illegible] proceedings aforesaid, as the matters aforesaid [illegible] for error assigned, and that the judgment [illegible] aforesaid, in form aforesaid given, may be in [illegible] affirmed. But because the court of [illegible] said lord the king now here, is not yet advised what judgment to give of and upon the [illegible] a day is given therefore to the parties [illegible], to come before the said lord the king [illegible] *Wednesday* the [illegible] lord the king shall

[illegible] day mentioned in the rule for the [illegible]

then

CHAP. XV.

The plaintiff in error, that there is a warrant of attorney.

WHEREAS said writ of certiorari, [illegible] reared and prayed, follows in the [illegible] words, to wit, GEORGE the third, by the grace of God, (to the end of the term of Easter in the present chapter,) Stormont [illegible] Wherefore which said chief justice of the bench [illegible] returned and certified unto our said [illegible] and our judges, that by virtue of the said writ [illegible] warrant, he had searched the records, [illegible] remembrance rolls of the warrants of [illegible] attorney, for the county of Middlesex, [illegible] attorney, filed of record, of Easter term [illegible] the eighth year of the reign of our said [illegible] the king, and that there was a warrant [illegible] of attorney to warrant the said John [illegible] be attorney for the said John, against the said [illegible] Gregory, in the plea aforesaid, in [illegible] filed of record, of the term aforesaid; the tenor of which said warrant of [illegible] follows, as fully as the same remained in [illegible] filed of record, by the said [illegible] justice, thereby certified to the said [illegible] appeared by the schedule thereunto annexed; as the said chief justice was in [illegible] said writ of certiorari commanded: [illegible] said schedule to annexed to the said [illegible] warrant follows in these words, to wit, [illegible] Hilary of attorney received before [illegible]

liam de Grey, knight, chief justice of our lord the king, of the bench, and his companions, of *Easter* term, in the nineteenth year of the reign of our sovereign lord *George* the third, by the grace of God, of *Great Britain*, *France*, and *Ireland*, king, defender of the faith, *&c.* **Middlesex** to wit, *Ann Hook* puts in her place *John Den* her attorney, against *John Gregory*, late of *Westminster* in the said county of *Middlesex*, yeoman, in a plea of trespass on the case. Which said writ of *certiorari*, together with the return thereof, among the records without day, of *Easter* term aforesaid, is filed. And hereupon afterwards to wit, on *Saturday* next after eight days of St. *Martin*, in the twentieth year of the reign of the said lord the king, the said *Ann Hook*, by her attorney aforesaid, freely comes here into court, and says, that there is no error either in the record and proceedings aforesaid, or in giving the judgment aforesaid, and she prays that the court of the said lord the king now here, may proceed to examine as well the record and proceedings aforesaid, as the matters aforesaid for error assigned, and that the judgment aforesaid, in form aforesaid given, may be in all things affirmed. But because the court of the said lord the king now here, is not yet advised what judgment to give of and upon the premisses, a day is given therefore to the parties aforesaid, to come before the said lord the king on *

Continuance.

wheresoever the said lord the king shall

* Insert the day mentioned in the rule for the consilium.

then

then be in *England*, to hear the judgment aforesaid, for that the court of the said lord the king now here, is not yet advised thereof, *&c.*

J. Morgan.

The directions given in the twelfth chapter are fully applicable to be followed in the present process in all respects.

CHAP.

CHAP. XVI.

Containing the assignment of the general errors.

AFterwards, to wit, on *Wednesday* in three weeks of the *Holy Trinity*, in this same term, comes the said *John Gregory*, by *Richard Fen* his attorney, and says that in the record, and proceedings aforesaid, and also in giving the judgment aforesaid, there is manifest error in this, to wit, that the declaration aforesaid, and the matters therein contained, are not sufficient in law for the said *Ann* to have and maintain her aforesaid action thereof against the said *John*. There is also error in this, to wit, that by the record aforesaid, it appears, that the judgment aforesaid, in form aforesaid given, was given *for* the said *Ann against* the said *John*. Whereas by the law of the land the said judgment ought to have been given *for* the said *John against* the said *Ann* *. And the said *John* prays that the judgment aforesaid, for

* If the writ of error is sued out for delay only, and that there is no probability of reversing the judgment, the plaintiff in error will not be in any hurry for the defendant to join in *nullo est erratum*: therefore he need not pray a certiorari for the defendant to hear errors, as is done in *page* 72. for he will take care to lose no time in doing it, without being forced thereto by a *certiorari*: which is in this place made use of, when the plaintiff in error thinks he can reverse the judgment, in order to compel the opposite party to appear to hear errors.

the errors aforesaid, and other errors in the record and proceedings aforesaid, may be reversed, annulled, and altogether held for nothing, and that he may be restored to all things which he hath lost by occasion of the said judgment, *&c.*

A. Chambre.

The general joinder in nullo est erratum.

AND hereupon afterwards to wit, on *Saturday* next after the morrow of *All-Souls*, in *Michaelmas* term, in the 20th year of the reign of the said lord the king, the said *Ann Hook*, by *John Den* her attorney, freely comes here into court, and says, that there is no error either in the record and proceedings aforesaid, or in giving the judgment aforesaid; and she prays that the court of the said lord the king now here, may proceed to examine, as well the record and proceedings aforesaid, as the matters aforesaid above for error assigned, and that the judgment aforesaid, in form aforesaid given, may be in all things affirmed. But because the court of the said lord the king now here, is not yet advised what judgment to give of and concerning the premisses; a day is therefore given to the parties aforesaid to come before the said lord the king on wheresoever the said king shall then be in *England*, to hear judgment aforesaid, for that the court of the said lord the king now here, is not advised thereof *&c.*

J. Morgan.

CHAP.

CHAP. XVII.

The form of the earlier writs made at the roll.

TO shew the law and practice of writs of error in a full account, during the following proceedings, vary in every part from the foregoing, and are complete in themselves from the beginning to the end, both in the case at law, and on the writ of error.

An act of Parliament.

"*Warrant* William *earl of Mansfield*."

England. GEORGE, *by the grace of God, king of Great Britain, France, and Ireland, king, defender of the faith, and so forth.* To our trusty and well-beloved *Sir William de Grey*, knight, chief justice of our bench, greeting. *Because in the record and process, and also in the giving of judgment, of the plaint which was in our court before you, and your companions, our justices of the bench, by our writ, between John Foster, and Benjamin Dee, late of Ma-*

* Warrant of attorney may be omitted.

CHAP. XVII.

The form of the entries to be made on the rolls.

TO ſhew the law and practice of writs of error in a ſtill greater degree, the following proceedings vary in every part from the foregoing, and are complete in themſelves from the beginning to the end, both in the cauſe at law, and on the writ of error.

"As yet of Michaelmas term, 1780.

"*Witneſs* William *earl of Mansfield.*" *

England *to wit.* "OUR lord the king hath ſent to his truſty and well-beloved "Sir *William de Grey*, knight, his writ cloſed "in theſe words: *GEORGE* the third, by the "grace of God, of *Great Britain*, *France*, and "*Ireland*, king, defender of the faith, and "ſo forth. To our truſt and well beloved Sir "*William de Grey*, knight, chief juſtice of the "bench, greeting. *Becauſe* in the record, and "proceſs, and alſo in the giving of judg-"ment, of the plaint which was in our court "before you, and your companions, our "juſtices of the bench, by our writ, between "*John Foſter*, and *Benjamin Dun*, late of *Weſt-* Writ of error.

* Warrants of attorney may be omitted.

" *minſter*, in the county of *Middleſex*, gentle-
" man, of a certain debt of 100 *l.* which the
" ſaid *John* demands of the ſaid *Benjamin*,
" manifeſt error hath intervened, to the great
" damage of him the ſaid *Benjamin*; as we
" from his complaint are informed: *We* being
" willing that the error, if any there be,
" ſhould be corrected in due manner, and
" that full and ſpeedy juſtice ſhould be done
" to the parties aforeſaid, in this behalf, do
" command you, that if judgment thereof
" be given, then, under your ſeal, you do
" diſtinctly and openly ſend the record and
" proceſs of the plaint aforeſaid, with all
" things concerning them, and this writ, ſo
" that we may have them on the morrow of
" the *Holy Trinity*, wherefoever we ſhall then
" be in *England:* that, the record and proceſs
" aforeſaid being inſpected, we may cauſe to
" be done thereupon, for correcting that er-
" ror, what of right, and according to the
" law and cuſtom of our realm of *England*,
" ought to be done. Witneſs ourſelf at
" *Weſtminſter*, the 8th day of *May*, in the
" twentieth year of our reign.

Chief juſtice's return.

" *The anſwer of Sir* William de Grey *the*
" *chief juſtice within named.*

" *The record* and proceſs, whereof mention
" is within made, follow in theſe words, to
" wit:

The record.

" PLEAS at *Weſtminſter*, before Sir
" *Wiliam de Grey*, knight, and his brethren
" juſtices of the bench of the lord the king
" at *Weſtminſter*, of the term of *Eaſter*, in the
20th

"20th year of the reign of our sovereign lord "*George* the third, by the grace of God, of "*Great Britain*, *France*, and *Ireland*, king, "defender of the faith, &c. And in the year "of our Lord 1780. Roll 1000. *Middlesex* "to wit, *Benjamin Dun*, late of *Westminster*, in "the said county of *Middlesex*, gentleman, was "*summoned* to answer *John Foster*, of a plea "that he render to him 100*l.* of lawful money "of *Great Britain*, which he owes to, and "unjustly detains from him. *And thereupon* "the said *John*, by *Richard Fen*, his attorney, "*saith*, *That whereas* the said *Benjamin*, on the "first day of *January*, in the year of our Lord "1780, at *Westminster*, in the county of "*Middlesex* aforesaid, by his certain writing "obligatory, called a bond, sealed with his "seal, and now shewn to the court here, "the date whereof is the same day and year "aforesaid, became held and firmly bound "to the said *John*, by the name of *John* "*Foster*, of *Lambeth*, in the county of *Surry*, "timber-merchant, in the said sum of 100*l.* "to be paid to the said *John*, whenever "afterwards he the said *Benjamin* should be "thereto requested. *Yet* the said *Benjamin* "(although often thereto requested, &c.) "hath not rendered to the said *John*, the "said sum of 100*l.* above demanded, or any "part thereof: but so to do the said *Benja-* "*min* hath hitherto altogether refused, and "still doth refuse, and the same is still un-"paid; wherefore the said *John* saith, that he "is injured, and hath sustained damage to the "value of ten pounds, and therefore he "brings his suit, and so forth. *And* the said

The declaration (by the author.)

Profert in curia.

"said *John* brings here into court the said "writing obligatory, which testifies the debt "aforesaid, the date whereof is the same day "and year in that behalf above mentioned.

Demurrer.

"AND the said *Benjamin*, by *John Den* his "attorney, comes and defends the force and "injury when, *&c.* and saith that the de-"claration aforesaid, and the matters therein "contained, are not sufficient in law for the "said *John* to have his aforesaid action there-"of maintained against the said *Benjamin*; "to which said declaration, in manner and "form as the same is above set forth, the "said *Benjamin* is not under any necessity, "neither is he bound by the law of the land "in any manner to answer. And this he "is ready to verify. Wherefore for want "of a sufficient declaration in this be-"half, the said *Benjamin* prays judgment, "and that the said *John* may be barred "from having his said action thereof main-"tained against him, *&c.*—*Nash Grose.*—

Joinder in demurrer.

"AND the said *John* saith that the decla-"ration aforesaid, in manner and form as "the same is above set forth, and the mat-"ters therein contained, are sufficient in law "for the said *John* to have his aforesaid ac-"tion thereof maintained against the said *Ben-*"*jamin*; which said declaration, and the mat-"ters therein contained, the said *John* is "ready to verify and prove as the court shall "award. And because the said *Benjamin* hath "not answered to the said declaration, nor "hitherto in any manner denied the same, the "said *John* prays judgment, and his debt

afore-

" aforesaid, together with his damages occa-
" sioned by detaining the said debt, to be
" adjudged to him. *Etc. Thomas Walker.*

AND BECAUSE the judges here in court, Continuance.
" will advise themselves of and upon the pre-
" cedents before they give judgment upon the
" same, a day is therefore given to the parties
" aforesaid here, until fifteen days from the
" day of *Easter*, to hear their judgment there-
" upon, for that the said judges here, are not
" yet advised thereof. At which day came
" as well the said *John*, as the said *Benjamin*,
" by their attorneys aforesaid. *Whereupon* the Opinion of
" matters aforesaid being been seen, and by the court.
" the judges here fully understood; and all
" and singular the precedents being examin-
" ed, and mature deliberation had there-
" upon; for that it seems to the said judg-
" es here, that the declaration aforesaid,
" and the matters therein contained, *are not*
" *sufficient in law* for the said *John* to have
" his aforesaid action thereof maintained
" against the said *Benjamin*. *Therefore it is*
" *considered*, that the said *John* take nothing
" by his writ aforesaid, but that he and his
" pledges of prosecuting, to wit, *John Doe*,
" and *Richard Roe*, be in mercy for his false
" complaint, and that the said *Benjamin* go
" thereof without day, *Etc.* *And it is fur-* Amercement.
" *ther considered*, that the said *Benjamin* do re-
" cover against the said *John*, ten pounds and Costs.
" ten shillings, for his said costs, and charges,
" by him upon his defence, in this behalf sus-
" tained, adjudged by the court here to the
" said *Benjamin*, with his assent, according to

" aforesaid, together with his damages occa-
" sioned by detaining the said debt, to be
" adjudged to him, *&c. Thomas Walker.*
" AND BECAUSE the justices here in court, Continuance.
" will advise themselves of and upon the pre-
" misses before they give judgment upon the
" same; a day is therefore given to the parties
" aforesaid here, until fifteen days from the
" day of *Easter*, to hear their judgment there-
" upon, for that the said justices here, are not
" yet advised thereof. At which day came
" as well the said *John*, as the said *Benjamin*,
" by their attornies aforesaid. *Whereupon* the Opinion of
" matters aforesaid having been seen, and by the court.
" the justices here fully understood; and all
" and singular the premises being examin-
" ed, and mature deliberation had there-
" upon; for that it seems to the said jus-
" tices here, that the declaration aforesaid,
" and the matters therein contained, *are not*
" *sufficient in law* for the said *John* to have
" his aforesaid action thereof maintained
" against the said *Benjamin*. *Therefore it is*
" *considered*, that the said *John* take nothing
" by his writ aforesaid, but that he and his
" pledges of prosecuting, (to wit) *John Doe*,
" and *Richard Roe*, be in mercy for his false
" complaint, and that the said *Benjamin* go
" thereof without day, *&c. And it is fur-* Amercement.
" *ther considered*, that the said *Benjamin* do re-
" cover against the said *John*, ten pounds and Costs.
" ten shillings, for his said costs, and charges,
" by him about his defence, in this behalf sus-
" tained, adjudged by the court here to the
" said *Benjamin*, with his assent, according to

" the form of the ſtatute in ſuch caſe made
" and provided; and that the ſaid *Benjamin*
" may have execution thereof, *&c.*

Execution awarded.

General error aſſigned.

AFTERWARDS, that is to ſay, on
" *Monday* next after the morrow of *All Souls*,
" in this ſame term, before our ſovereign lord
" the king at *Weſtminſter*, comes the ſaid *John*
" *Foſter*, by *Richard Fen* his attorney, and
" ſaith that in the record and proceſs afore-
" ſaid, and alſo in giving the judgment afore-
" ſaid, there is manifeſt error, in this, (to wit)
" that the judgment aforeſaid, in form afore-
" ſaid given, was given for the ſaid *Benja-*
" *min* againſt the ſaid *John:* whereas by the
" law of the land the ſaid judgment ought
" to have been given for the ſaid *John*
" againſt the ſaid *Benjamin.* And this he the
" ſaid *John* is ready to verify. And the ſaid
" *John* prays a writ of the ſaid lord the king
" to warn the ſaid *Benjamin* to be before
" the ſaid lord the king to hear the record
" and proceſs aforeſaid, and the matter afore-
" ſaid for error aſſigned, and it is granted to
" him, *&c.* by which it is commanded to
" the ſheriff of the county aforeſaid, that by
" good and lawful men of his bailiwick, he
" make it known to the ſaid *Benjamin* that
" he be before the lord the king in fifteen
" days of Saint *Martin*, wherefoever he ſhall
" then be in *England*, to hear the record and
" proceſs aforeſaid, and the matter aforeſaid
" for error aſſigned; and further to do and
" receive what the ſaid court of the ſaid lord
" the king ſhall conſider of him in this be-
" half. The ſame day is given to the ſaid
John,

Scire facias to hear errors.

" the form of the plaintiff in such case made
" and provided; and that the said *Benjamin*
" may have execution thereof, &c.

Transcript sent down.

General form of assigned.

AFTERWARDS, that is to say, on
" Monday next after the month of *All Souls*,
" in the same term, before our Sovereign lord
" the King at *Westminster*, comes the said *John*
" *Fodge*, by *Richard Fox*, his attorney, and
" saith that, in the record and process aforesaid,
" and also in giving the judgment aforesaid,
" there is manifest error in this, for we
" that the judgment aforesaid, in form afore-
" said given, was given for the said *Benja-*
" *min* against the said *John*; whereas by the
" law of the land the said judgment ought
" to have been given for the said *John*
" against the said *Benjamin*. And this he
" said *John* is ready to verify. And the said
" *John* prays a writ of the said lord the King
" to warn the said *Benjamin* to be before
" the said lord the King to hear the record
" and process aforesaid, and the matter above
" said in error alleged, and it is granted to
" him, &c. by which it is commanded to
" the sheriff of the county aforesaid, that
" good and lawful men of his bailiwick
" make it known to the said *Benjamin*
" he be before the said lord the King in the
" day of Saint *Martin*, wherever he shall
" then be in *England*, to hear the record
" process aforesaid, and the matter above
" for error alleged, and further to do and
" receive what the law court of the said lord
" the King shall consider of him in this
" behalf. The same day is given to the said

" *John*, &c. At which day, before our ſaid " lord the king, comes the ſaid *John*, by his " attorney aforeſaid, and offers himſelf againſt " the ſaid *Benjamin*; and the ſheriff (to wit) " ſheriff of the ſaid county " returns, that by virtue of the ſaid writ to " him directed, he had cauſed it to be made " known to the ſaid *Benjamin*, that he be be- " fore the lord the king at the time in the " ſaid writ mentioned, by *James Strongarm*, " and *William Chariot*, good, &c. as by the " ſaid writ he was commanded, &c. And " the ſaid *Benjamin*, being ſolemnly called, * " by *John Den* his attorney, comes. Where- " upon the ſaid *John* as before, ſaith, that " in the record and proceſs aforeſaid, and alſo " in giving the judgment aforeſaid, there is " manifeſt error in this, (to wit) that the " judgment aforeſaid, in form aforeſaid given, " was given for the ſaid *Benjamin*, againſt the " ſaid *John*: whereas, by the law of the land, " the ſaid judgment ought to have been " given for the ſaid *John* againſt the ſaid *Ben-* " *jamin*. And this he is ready to verify. And " the ſaid *John* prays that the judgment " aforeſaid, for the error aforeſaid, and other " errors in the record and proceedings afore- " ſaid, may be reverſed, annulled, and alto- " gether held for nothing, and that he may " be reſtored to all things which he hath loſt " by occaſion of the ſaid judgment, &c.

Sheriffs return *ſcire feci*.

Assignment of error aforesh.

A. Chambre.

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* If the defendant in error does not appear on the *ſci. fa.* to hear errors, ſet down the cauſe for argument, and the plaintiff ſhall be heard *ex parte*.

AND

Joinder in error.

"AND the said *Benjamin*, by his attorney "aforesaid, comes and saith, that there is no er- "ror either in the record and proceedings afore- "said, or in giving the judgment aforesaid. "And he prays that the court of the said lord "the king now here, may proceed to examine, "as well the record and proceedings aforesaid, "as the matter aforesaid for error assign- "ed, and that the judgment aforesaid in "form aforesaid given, may be in all things "affirmed. *But because* the court of the said "lord the king now here, is not yet advised "what judgment to give of and upon the "premisses, a day is therefore given to the "parties aforesaid, to come before the said "lord the king on * where- "soever he shall then be in *England*, to hear "the judgment aforesaid, for that the court of "the said lord the king now here is not yet "advised thereof, *&c.*

Continuance.

J. Lane.

Opinion of the court.

"At which day before our lord the king "at *Westminster*, come the parties aforesaid, "by their attornies aforesaid, whereupon as "well the record and proceedings aforesaid, "and the judgment aforesaid, in form afore- "said given, as the matter aforesaid, by the "said *John* above for error assigned, being "seen and fully understood by the court of "the said lord the king now here, and ma- "ture deliberation had thereupon: for that "it appears to the court of our lord the king

* The day mentioned in the rule for *consilium*.

now

law here, that in the record and proceedings aforesaid, and also in giving the judgment aforesaid, *there is manifest error. Wherefore it is considered*, that the judgment aforesaid, for the error aforesaid, and other errors in the record and proceedings aforesaid, be reversed, annulled, and altogether held for nothing; and that the said *John* do recover against the said *Benjamin* his debt aforesaid, and also 40*l.* for his damages which he hath sustained, as well by reason of detaining the said debt, as for his costs and charges by him expended about his suit herein, by the court of our said lord the king, here adjudged to the said *John*, with his assent, and that he have execution thereof, &c. And the said *Benjamin* in mercy, &c."

Reversal.

Judgment for the plaintiff.

Judgment signed the day of 1781.

Mercy, &c.

CHAP.

The Bank v. Tarrice

Tarrice is co-

"AND the said defendant, by his attorney aforesaid, comes and says, that there is no error either in the record and proceedings aforesaid, or in giving the judgment aforesaid; and he prays that the court of the said lord the king now here, may proceed to examine as well the record and proceedings aforesaid, as the matter aforesaid for error assigned, and that the judgment aforesaid in form aforesaid given, may be in all things affirmed. *Et Assise* the court of the said lord the king now here, is not yet advised what judgment to give of and upon the premisses. A day is therefore given to the parties aforesaid, to come before the said lord the king on * wherever he shall then be in *England*, to hear the judgment aforesaid, for that the court of the said lord the king now here is not yet advised thereof, &c.

Conclusion

7. Law.

Opinion of the court.

"At which day before our lord the king at *Westminster*, come the parties aforesaid, by their attornies aforesaid, whereupon all and singular the record and proceedings aforesaid, and the judgment aforesaid, to form aforesaid given, as the matter aforesaid, by the said *Tarrice* above for error assigned, being seen and fully understood by the court of the said lord the king now here, and mature deliberation had thereupon; for that it appears to the court of our lord the king

* The day mentioned in the rule for regulating

"now here, that in the record and proceed-
"ings aforesaid, and also in giving the judg-
"ment aforesaid, *there is manifest error. There-*
"*fore it is considered*, that the judgment afore-
"said, for the error aforesaid, and other er-
"rors in the record and proceedings afore-
"said, be reversed, annulled, and altogether
"held for nothing; and that the said *John*
"do recover against the said *Benjamin* his
"debt aforesaid, and also 40 *l.* for his damages
"which he hath sustained, as well by means
"of detaining the said debt, as for his costs
"and charges by him expended about his suit
"in this behalf, by the court of our said lord
"the king now here adjudged to the said
"*John*, with his assent, and that he have exe-
"cution thereof, *&c.* And the said *Benja-*
"*min* in mercy, *&c*".

Reversal.

Judgment for the plaintiff.

Judgment signed the day of 1781.

Mercy, *&c.*

CHAP.

CHAP. XVIII.

The diversity of errors.

Error { *in fact.* / *in law.*

Cro. Jac. 580. 581.

IF matters of fact are alleged in error, as non-age, death, *&c. &c.* a proper plea must be made thereto, and issue taken thereon, and tried, as in any other issue.

Cro. Eliz. 158. Lord Stafford's case.

Error upon a judgment in assize, and the plaintiff assigns one error in fact (to wit) that the land lay in *D.* in the county of *Monmouth*, and not in *Salop*, where the assize was held.

Yelv. 58. King v. Gospire. 2 Saund. 212. 213.

The defendant in replevin, against whom judgment was given, assigns for error there were two avowants, one of whom being within age, appeared by attorney; whereas he ought to have appeared by *guardian*. This therefore is an error not triable by the court, but in it's proper nature by the country.

22 Edw. IV. 46.

In avoidance of an outlawry, defendant assigns for error he was in *France* under a captain in war; this is matter of fact, and shall be tried by the captain's certificate.

22 Edw. IV. 46.

But contrarywise to say, there is not any original, *&c.* or in avoidance of an outlawry,

ry, that he was but *quarto exactus*; for these are manifested by the record of the *exigent*, and *certiorari*, when returned and certified.

This process is called

Writ of Error, coram vobis residet'.

It lies not in the *Exchequer chamber*; but on judgments given in the *Common Pleas*, it lies in the *King's Bench*; and on the judgments of the latter, it then lies in the same court: when sued out it must be allowed in court, and it is no supersedeas (as it is said) but by leave of the court; in regard none of the statutes, which oblige the plaintiff in error to put in bail, extend to it.

2 Mod. 194.

Q. if it may not be allowed in vacation.

To compel the plaintiff to assign errors, the court must be moved, and he must assign errors immediately upon service of the rule.

The errors are to be assigned and entered upon the record of the judgment.

The errors to be assigned must be facts only, as before mentioned: error in fact, is not the error of the judges, and the reversing a judgment given by them, which is erroneous in matter of fact only, is not reversing their judgment; but otherwise if the judgment be erroneous in matter of law, for they cannot be said to reverse their own judgments.

Upon

Defendant on error in fact assigned, may carry the cause to trial the first assizes *without* proviso.

Upon issue taken of error in fact, you may proceed to trial as in other common cases, and if found for the plaintiff on trial, he must move to put the cause in the paper for argument, and then, producing the *postea*, the court will give judgment of reversal.

E. 13 Geo. 1. Kingv. Jones. *M. S.* Rep.

In error *cor. vob.* there is no *scire facias* to assign error, but the defendant in error must move the court for a rule against the plaintiff in error to assign his errors.

A record of *Nisi prius, on issue joined in error in fact.*

Pleas *before our lord the king at* Westminster, *of the term of the* Holy Trinity, in the 20th year of the reign of our sovereign lord *George* the third, by the grace of God, of *Great Britain*, *France*, and *Ireland*, king, defender of the faith, *&c.*

Roll 1000.

Stormont and *Way.*

The writ of error coram vobis residet.

England, (to wit.) OUR lord the king hath sent to his trusty and well beloved Sir *William de Grey*, Knight, his chief justice of the *Bench*, his writ closed in these words. *George* the third, by the grace of God, of *Great Britain*, *France*, and *Ireland*, king, defender of the faith, *&c.* To our trusty and well beloved Sir *William de Grey*, knight, our chief justice of the *Bench*, greeting. Because in the record and process, as also in the giving of

of judgment, in a plaint, which was in our court before you, and your companions our justices of the *Bench*, by our writ, between *Thomas Cade*, and *John Fox*, late of *Westminster*, in the county of *Middlesex*, gentleman, and *Solomon Ellers*, late of the same place, gentleman, of a plea of trespass on the case, wherein error hath intervened, to the great damage of the said *John* and *Solomon*, as we from the records of the said *John* and *Solomon* are informed. We being willing that the error, if any there be, should be corrected in due manner, and that full and speedy justice should be done to the parties aforesaid, in this behalf, do command you, that if judgment thereof be given, then, under your seal, you do distinctly, and openly, send the record and process of the plaint aforesaid, with all things concerning the same, and this writ, so that we may have them on the octave of Saint *Hilary*, wherever we shall then be in *England*, that the record and process aforesaid being inspected, we may cause to be done thereupon for correcting that error, what of right, and according to the law and custom of our realm of *England*, ought to be done. Witness ourself at *Westminster*, the 29th day of *November*, in the twentieth year of our reign. The answer of Sir *William de Grey*, knight, the chief justice within named. *The Record and Process*, whereof mention is within made, follow in these words. Pleas at *Westminster*, before Sir *William de Grey*, knight, and his brethren, justices of our lord the king of the *Bench* at *Westminster*, of the term of Saint *Michael*, in the twentieth year of the reign our sovereign lord

Chief justice's answer.

George

of judgment, in a plaint, which was in our court before you, and your companions, our justices of the *Bench*, by our writ, between *Thomas Sable*, and *John Vie*, late of *Westminster*, in the county of *Middlesex*, gentleman, and *Solomon Mort*, late of the same place, gentleman, of a plea of trespass on the case, manifest error hath intervened, to the great damage of the said *John* and *Solomon*, as we from the complaint of the said *John* and *Solomon* are informed. We being willing that the error, if any there be, should be corrected in due manner, and that full and speedy justice should be done to the parties aforesaid, in this behalf; do command you, that if judgment thereof be given, then, under your seal, you do distinctly, and openly, send the record and process of the plaint aforesaid, with all things concerning them, and this writ, so that we may have them on the octave of Saint *Hilary*, wheresoever we shall then be in *England*, that, the record and process aforesaid being inspected, we may cause to be done thereupon for correcting that error, what of right, and according to the law and custom of our realm of *England*, ought to be done. Witness ourself at *Westminster*, the 29th day of *November*, in the twentieth year of our reign. The answer of Sir *William de Grey* knight, the chief justice within named. *The Record and Process*, whereof mention is within made, follow in these words, **Pleas** at *Westminster*, before Sir *William de Grey*, knight, and his brethren, justices of our lord the king of the *Bench* at *Westminster*, of the term of Saint *Michael*, in the 20th year of the reign our sovereign lord

Chief justice's return.

George

George the third, by the grace of God, of *Great Britain*, *France*, and *Ireland*, king, defender of the faith, *&c.* Roll 851. **Middlesex**, to wit, *John Vie*, late of *Westminster*, in the county of *Middlesex*, gentleman, and *Solomon Mort*, late of the same place, gentleman, were attached to answer *Thomas Sable*, of a plea of trespass on the case, *&c.* and thereupon the said *Thomas*, by *John Den* his attorney, complains, that whereas the said *John* and *Solomon*, on the first day of *January* in the year of our Lord 1780, at *Westminster* aforesaid, were indebted to the said *Thomas* in 30*l* of lawful money of *Great Britain*, *as well for work and labour before that time done and performed by the said* Thomas, *for the said* John *and* Solomon, *in and about the funeral of one* William Mort *deceased, at the special instance and request of the said* John *and* Solomon, *as also for diverse materials, and necessary things, used and employed in and about the doing and performing the said work and labour, and in and about the said funeral, by the said* Thomas, *at the like special instance and request of the said* John *and* Solomon, *before that time found and provided.* And being so indebted, the said *John* and *Solomon*, in consideration thereof, afterwards, (to wit) on the same day and year aforesaid, at *Westminster* aforesaid, undertook and then and there faithfully promised the said *Thomas*, to pay him the said sum of money, whenever afterwards they the said *John* and *Solomon* should be thereto requested. AND WHEREAS ALSO the said *John* and *Solomon* afterwards, (to wit) on

The writ.

Declaration for an undertaker's bill. By J. Lane Esq;

The Lord and Plaintiff

George the third, by the grace of God, King of Great Britain, France, and Ireland, King, Defender of the Faith, &c. To the Sheriff of Middlesex, to wit, *John Doe*, late of Ipswich in the county of Albemarle, gentleman, and *Solomon Moss*, late of the same place, yeoman, were attached to answer *Thomas Roe* of a plea of the plaint on the case, &c. and thereupon the said *Thomas* by *John Doe* his attorney complains, that whereas the said *John* and *Solomon*, on the first day of *January* in the year of our Lord 1786, at *Middlesex* aforesaid, were indebted to the said *Thomas* in sum of lawful money of *Great Britain*, as well for work and labour before that time done and performed by the said *Thomas*, for the said *John* and *Solomon*, and about the funeral of one *William Brown* deceased, at the special instance and request of the said *John* and *Solomon*, as also for divers materials, and necessary things, used and employed and about the same and appertaining thereto, work and labour, and in and about the said funeral, by the said *Thomas*, at the like special instance and request of the said *John* and *Solomon* before that time found and provided. And being so indebted, the said *John* and *Solomon* in consideration thereof, afterwards, (to wit) on the same day and year aforesaid, at *Middlesex* aforesaid, undertook and then and there fully promised the said *Thomas*, to pay him the said sum of money, whenever afterwards they the said *John* and *Solomon* thereunto requested. AND WHEREAS, the said *John* and *Solomon* afterwards, (to wit)

on the ſame day and year aforeſaid, at *Weſtminſter* aforeſaid, in conſideration that the ſaid *Thomas*, at the ſpecial inſtance and requeſt of the ſaid *John* and *Solomon*, had before that time *done and performed other work and labour for the ſaid* John *and* Solomon, *in and about the funeral of one* William Mort *deceaſed, and had alſo uſed and employed diverſe other materials and neceſſary things, in and about the doing and performing the ſaid work and labour, and in and about the ſaid funeral, by the ſaid* Thomas, *at the like ſpecial inſtance and requeſt of the ſaid* John *and* Solomon, *before that time found and provided*; undertook, and then and there faithfully promiſed the ſaid *Thomas* to pay him ſo much money as he therefore reaſonably deſerved to have of the ſaid *John* and *Solomon*, whenever afterwards they the ſaid *John* and *Solomon* ſhould be thereto requeſted. And the ſaid *Thomas* doth aver, that he therefore reaſonably deſerved to have of the ſaid *John* and *Solomon*, other 30 *l.* of like lawful money, that is to ſay, at *Weſtminſter* aforeſaid, whereof the ſaid *John* and *Solomon* afterwards, (to wit,) on the ſame day and year aforeſaid, there had notice. (*Add counts for goods ſold and delivered, for which ſee page* 26.) AND WHEREAS ALSO the ſaid *John* and *Solomon*, afterwards, (to wit) on the ſame day and year aforeſaid, at *Weſtminſter* aforeſaid, was indebted to the ſaid *Thomas* in the farther ſum of 30*l.* of like lawful money, for money before that time laid out, expended, and paid by the ſaid *Thomas*, for and to the uſe of the ſaid *John* and *Solomon*, and in and about the funeral

ral expences of one *William Mort* deceaſed, at the ſpecial inſtance and requeſt of the ſaid *John* and *Solomon*; and being ſo indebted, the ſaid *John* and *Solomon* in conſideration thereof, afterwards, (to wit) on the ſame day and year aforeſaid, at *Weſtminſter* aforeſaid, undertook and then and there faithfully promiſed the ſaid *Thomas*, to pay him the ſaid laſt-mentioned ſum of money whenever afterwards they the ſaid *John and Solomon* ſhould be thereto requeſted. *Nevertheleſs* the ſaid *John* and *Solomon*, not at all regarding their ſaid ſeveral promiſes, and undertakings, in form aforeſaid made, but contriving, and fraudulently intending, to deceive and defraud the ſaid *Thomas* in this behalf, have not, nor hath either of them, paid to the ſaid *Thomas* the ſaid ſeveral ſums of money, or either of them, or any part thereof; (although the ſaid *John* and *Solomon*, afterwards, (to wit) on the ſame day and year aforeſaid, and often ſince at *Weſtminſter* aforeſaid, have been requeſted by the ſaid *Thomas* to pay him the ſame.) But to pay the ſame to the ſaid *Thomas*, they the ſaid *John* and *Solomon* have, and each of them hath, altogether refuſed, and ſtill do refuſe; and the ſame are ſtill unpaid, to the damage of the ſaid *Thomas* of 40 *l.* and therefore he brings his ſuit, *&c.*

Defendants plead by two attornies.

And the ſaid *John*, by *Richard Fen* his attorney, and the ſaid *Solomon*, by *Richard Ro* his attorney, come and defend * the force and

* If the pleas are delivered ſeparately, they may be put either way in the iſſue, and record, ſeparately, or in the form above ſet forth.

injur

injury when, *&c.* and ſay, they did not undertake, and promiſe, in manner and form as the ſaid *Thomas* hath above thereof complained againſt them: and of this they put themſelves upon the country; and the ſaid *Thomas* doth the like. Therefore the ſheriff is commanded that he cauſe to come here *in eight days of the Purification of the bleſſed Mary*, twelve, *&c.* by whom, *&c.* and who neither, *&c.* to recognize, *&c.* Becauſe as well, *&c.**

Middleſex, to wit, **The Jury** between *Thomas Sable*, plaintiff, and *John Vie*, late of *Weſtminſter*, in the county of *Middleſex*, gentleman, and *Solomon Mort*, late of the ſame place gentleman, defendants, in a plea of treſpaſs on the caſe, is reſpited here until the morrow of the *Holy Trinity*, unleſs Sir *William de Grey* knight, the king's chief juſtice of the *Bench* here aſſigned, according to the form of the ſtatute in that caſe made and provided, ſhall firſt come on *Thurſday* the 24th day of *June*, at *Weſtminſter*, in the great hall of pleas there, commonly called *Weſtminſter-hall*, for default of the jurors becauſe none came. Therefore let the ſheriff have the bodies of the ſeveral perſons mentioned in the panel an- *Jurata.*

* In the *Common Pleas* the *placita* is wrote but once, except on the *death* or *change* of the chief juſtice, or on an old iſſue; then there muſt be two as in *B. R.* but after the plea it is uſual to leave a blank before the *jurata*, for another *placita*, in caſe the cauſe ſhould not be tried at the time intended.

nexed to the writ of *habeas corpora juratorum*. And be it known that the justices here in court, in this same term, delivered a writ thereupon to the under-sheriff of the county aforesaid, to be executed in due form of law, *&c.*

Postea. **Afterwards** on the day, and at the place within contained, before Sir *William de Grey* knight, chief justice within written, *A. B.* gentleman, being associated to the said chief justice, according to the form of the statute, *&c.* comes the within-named *Thomas Sable*, by his attorney within mentioned, and the within-named *John Vie*, and *Solomon Mort*, come not. Therefore let the jury, whereof mention is within made, be taken against them by default; and the jurors of the said jury being called come, who to speak the truth of the premisses within written, being elected, tried, and sworn, upon their oath say, that the said *John* and *Solomon* did undertake and promise in manner and form as the said *Thomas* hath within complained against them. And they assess the damages of the said *Thomas*, on occasion thereof, over and above his costs and charges, to 20*l.* and for those costs and charges to 40*s.* Therefore, *&c.* *(add the final judgment.)*

Note. In the *Common Pleas* final judgments on *posteas*, and writs of inquiry, are entered by the clerk of the judgments.

Errors assigned. AFTERWARDS, (to wit,) on *Wednesday* next after fifteen days from the day of *Easter*,

Easter, in this same term, before our lord the king at *Westminster*, comes the said *John Vie*, by *Richard Fen* his attorney, and says, that in the record and proceedings aforesaid, as also in giving the judgment aforesaid, there is manifest error in this, (to wit that by the record aforesaid, it appears, that the judgment aforesaid, in form aforesaid given, was given as well against the said *John Vie*, as against the said *Solomon Mort*; when in truth and in fact the said *Solomon Mort*, in the said record mentioned, before the trial of the issue in the said record joined, between the parties aforesaid, of the plea aforesaid, and before the giving the judgment aforesaid, (to wit,) on the 30th day of *January*, in the 20th year of the reign of our sovereign lord the now king, at *Westminster* aforesaid * died; and so the judgment aforesaid, in form aforesaid given, is erroneous, and void in law. And this he prays may be inquired of by the country; and that the judgment aforesaid, for the errors aforesaid, and other errors in the record and proceedings aforesaid, may be reversed, annulled, and altogether held for nothing; and that the said *John* may be restored to all things which he hath lost by occasion of the said judgment. And the said *John* prays a writ of our lord the king † to give notice to the said *Thomas Sable* to be before our said lord the king, to hear as well the record and proceedings aforesaid, as the matters aforesaid, for error assigned, and it is granted to him. By

Death of one of the defendants before trial.

* Departed this life. † To summon.

which it is commanded to the sheriff of *Middlesex*, that by good, *&c.* he make known to the said *Thomas* that he be before the lord the king on the morrow of the *Holy Trinity*, wheresoever, *&c.* to hear as well the record and proceedings aforesaid, as the matter aforesaid for error assigned, if, *&c.* And further, *&c.* The same day is given to the said *John*, *&c.*

At which day the said *John*, by his attorney aforesaid, comes before our lord the king, at *Westminster*, and offers himself against the said *Thomas*; and the sheriff, (to wit) *Thomas Wright*, Esq; and *Evan Pugh*, Esq; sheriff of the said county of *Middlesex*, returns, that by virtue of the said writ to him directed, by *James Strongarm*, and *William Chariot*, good, *&c.* he has given notice to the said *Thomas* to appear, *&c.* to hear, *&c.* as by that writ he was required. And the said *Thomas* being solemnly called, by *John Den* his attorney, comes, and says, that by reason of any thing by the said *John* above alleged, the said judgment ought not to be reversed, because he saith that the said *Solomon Mort* in the said plea mentioned, is yet in being, and alive, (to wit,) at *Westminster* aforesaid. Without this, that the said *Solomon Mort*, before the trial of the said issue, in the said record joined, between the parties aforesaid, in the plea aforesaid, died in manner and form as the said *John* hath above alleged. And this he is ready to verify, wherefore he prays that the judgment aforesaid may be in all things affirmed, *&c.*

Scire feci.

Plaintiff replies defendant is living and traverses his death.

And the said *John* as before says, that the said *Solomon Mort* before the trial of the said issue in the said record joined, between the parties aforesaid, in the plea aforesaid, died, in manner and form as the said *John* hath above alleged; and of this the said *John* puts himself upon the country. And the said *Thomas* doth the like; it is therefore commanded to the sheriff that he cause to come before our lord the king, in three weeks of the *Holy Trinity*, wheresoever, *&c.* twelve, *&c.* by whom, *&c.* to recognize, *&c.* because as well, *&c.* The same day is given to the said parties there, *&c.*

Verification.

Issue.

Pleas before our lord the king at *Westminster*, of the term of Saint *Michael*, in the 21st year of the reign of our sovereign lord *George* the third, by the grace of God, of *Great Britain*, *France*, and *Ireland*, king, defender of the faith, *&c.* and in the year of our Lord 1780.

Middlesex, to wit, **The** Jury between *John Vie*, by his attorney plaintiff in error, and *Thomas Sable* defendant, of a plea of error in fact, is respited before our lord the king, until the octave of *Saint Hilary*, wheresoever the lord the king shall then be in *England*, unless the king's right trusty and well beloved *William* Earl of *Mansfield*, his majesty's chief justice assigned to hold pleas before the king himself, shall first come on *Wednesday* the 29th day of *November*, at *Westminster-hall* in the county of *Middlesex* aforesaid, according

to the form of the ſtatute in ſuch caſe made and provided, for default of the jurors becauſe none of them did appear. Therefore let the ſheriff have the bodies of the ſaid jurors, to make the ſaid jury, between the parties aforeſaid, of the plea aforeſaid, accordingly. The ſame day is given to the ſaid parties, *&c.*

Poſtea. *Afterwards* at the place, and on the day within mentioned, before *William* earl of *Mansfield*, the chief juſtice within mentioned; *John Way*, gentleman, being aſſociated to the ſaid chief juſtice, by form of the ſtatute in in ſuch caſe made and provided; come as well the ſaid *John Vie*, within named, as the ſaid *Thomas Sable* within mentioned, by their attornies aforeſaid, and the jurors of the jury, whereof mention is within made, being ſolemnly called, *Come:* who to ſpeak the truth of the premiſſes within written, being choſen by *Ballot*, elected, tried, and ſworn, ſay on their oath, that the ſaid *Soloman Mort* died in manner and form as the ſaid *John Vie* hath thereof above alleged. Therefore, *&c.*

CHAP.

CHAP. XIX.

Containing the proceedings in the Exchequer Chamber.

THE foregoing precedents, and directions, complete the proceedings down to affirmance and reversal of judgments in several different suits; laid down in such a clear and practical form as to enable every practicer to be perfect master of the subject: after the affirmance, or reversal, the recovery, or restitution, of the damages will be the next consideration, either by *ca. sa. fi. fa.* or *sci. fa.* against the principal, his bail, or the representatives of the bail, in case of their death; which ever way however the parties may be inclined to pursue for the best, genuine precedents of all those different writs will be found in the last Chapter.

We shall now adduce some general instructions on the subject of writs of error, issuing on judgments of the *King's Bench*, returnable in the *Exchequer Chamber*. In which there will not be a necessity of enlarging so much as hath been done in the other courts: because in the former almost all the proceedings are executed by the attorney: whereas in the latter the greatest part lies in the province of the clerk of the errors.

The matter contained in the third, fourth, and sixth chapters, (after substituting one court for

for the other) will be a sufficient guide for issuing a writ of error returnable in the *Exchequer Chamber*, and the subsequent proceeding thereon, in which the courts may agree, as far as those chapters extend. This will save numberless repetitions which are ever disgustful to an intelligent reader. One court indeed varies from the other with relation to the disbursements, such as 2 *l.* for the writ of error in *B. R.* and 2 *l.* 2 *s.* 6 *d.* in *C. B.* the rules to transcribe, *&c.* 2 *s.* in the former, and 4 *s.* in the latter; and in some other particulars not material, the knowledge whereof will readily result from practice, and moreover will be seen in the chapter of fees and disbursements.

Bail on error brought in the Exchequer Chamber.

If an action of debt is brought upon a bond to perform covenants, and there is judgment by default, without craving *oyer* of the condition; in this case, upon a writ of error brought, the plaintiff in error must put in bail, because it doth not appear to the court, upon the face of the record, that the condition was *for performance* of *covenants.*

On a bottomree bond there must be bail.

Str. 476. M. 8 Geo. I.

Plaintiff recovered on a bottomree bond, and the defendant brought a writ of error, but put in no bail; and the question was on the words of the statute, *bonds for payment of money only.*

only. Et per cur': The contingency having happened, this is now, in every respect, *a bond for the payment of the money only*, and therefore there must be bail.

The condition of a bond was, that if the defendant furnished a third person's cellar with beer, the defendant would pay any sum not exceeding 100 *l.* the defendant pleaded that none was delivered, to which plaintiff replied, there was a delivery to the value of 80 *l.* the defendant demurred, and judgment for the plaintiff. Error was brought, and no bail being put in, execution was taken out. Upon consideration of 3 *Jac.* 1. *c.* 8. where the words are, *bonds for the payment of money only*, the court set aside the execution; for this is by no means a *certain demand*, but *rests upon a quantum meruit*; and the sum is only put into the replication in order to assign a breach: and the *act being to restrain on a legal remedy*, must be strictly. (Cites 1 *Keb.* 613. *Carth.* 28. 2 *Bulst.* 54. 1 *Lev.* 117.)

Str. 1190. T. Thrale v. Vaughan. 16 Geo. II.

Though an executor by 16 & 17 *Car.* 2. *c.* 8. is not obliged to give bail in error, yet if an executor will submit to do as other defendants do, the court may take it, and it will bind the parties.

Str. 741. Hil. 13 Geo. I.

No bail in error of an outlawry till reversal.

Pending a writ of error to reverse an outlawry on mesne process, the defendant in error moved to *quash* the writ because no bail was

Str. 951. Trin. 6 Geo. II.

was given. *Sed per cur'*: that is never done till the outlawry is reverſed, and then we take bail to appear to an original, to be brought within two terms: and ſo it was done in this caſe.

Str. 882. Hil. 2 Geo. II.

A *capias ad ſatisfaciendum* was taken out againſt bail on a writ of error, and the court refuſed to ſet it aſide: although by 1 *Rol. Abr.* 898. it is ſaid that it will not lie.

If the writ of error is returnable the firſt day of term, the plaintiff in error is the ſame term to tranſcribe; to alledge diminution the term following; aſſign errors the next term, and to argue errors the fourth term: but if the defendant in error, inſtead of ſerving the rule to tranſcribe at the return of the writ, neglects it for a term or two; the plaintiff muſt tranſcribe in that term in which the rule is ſerved: alledge diminution the ſame term, aſſign errors the term following, and argue errors the third term.

If the plaintiff in error does not enter the tranſcript on record the ſame term it is brought into the office, the defendant may: and whoever takes it out of the office firſt, is to keep it no longer than a copy is made, and then return it.

The plaintiff cannot demand oyer of his own writ, or plead any thing but an aſſignment of errors, which is in the place of a declaration.

In

In error in the *Exchequer Chamber* Mr. ~~Way~~ Smith grants the rule to transcribe.

In the King's Bench.

Hook *and* Gregory.

UNLESS the plaintiff in the writ of error certifies the record within eight days next after notice hereof given to the said plaintiff or his attorney, a nonsuit will be entered.

~~J. Way~~, R. Smith

Clerk of the errors.

After service of this rule the defendant in error is to leave all the proceedings down to the final judgment inclusive, or a copy of them, at Mr. *Way's* office, who makes the transcript therefrom; which, when ready, the defendant's attorney must examine it with the *King' Bench* roll in the *Treasury*, (which if not previously done, must be carried in before the transcript can be completed.) The *Treasury* is open every day in term time during the sitting of the court: and if it is after term, a clerk from the *Error-office*, in ~~*Portugal Street*~~ Serj. Inn, will go down with him to *Westminster* with the keys of the *Treasury*, for which he charges 5 *s.* 10 *d.* extraordinary.

Writs of error on judgments by bill in the *King's Bench* go into the *Exchequer Chamber*. After completing the transcript it is delivered over by Mr. *Way*, the clerk of the errors of the *King's Bench*, to Mr. *Cecil*, who executes the

the rest of the business as deputy to *Philip Fonnereau*, esq; clerk of the errors in the *Exchequer Chamber*.

After completing the transcript, take out and serve rule to allege diminution.

Rule to allege diminution.

In the Exchequer Chamber.

Hooke
and
Gregory

UNLESS the plaintiff in the writ of error alledge diminution within eight days next after notice hereof given to the said plaintiff or his attorney, a nonsuit will be entered.

Philip Fonnereau,
Clerk of the errors.

The writ of diminution is not an original writ, but issues out of the court where the writ of error is depending.

Cro. Jac. 130, 131.

After diminution is alleged, a *certiorari* issues whereby the thing is certified.

A judgment may be falsified, reversed, or avoided, in the first place, *without a writ of error*, for matters foreign to, or *debors* the record, that is, not apparent upon the face of it; so that they cannot be assigned for errors in the superior court, which can only judge from what appears in the record itself: and therefore if the whole record is not certified,

Rule to allege Diminution.

In the Exchequer Chamber.

Hooke
and
Gregory

UPON READING the plaintiff's writ of error, to allege diminution within eight days after service hereof given to the plaintiff or his attorney, a rule is entered.

Philip Ponsonby
Clerk of the Rules.

The writ of diminution is not an original writ, but issues out of the court where the writ of error is depending.

Cro. Jac. 139, 131.

After diminution is alleged, a certiorari issues whereby the thing is certified.

A judgment may be falsified, reversed, or avoided, in the first place, without any error, for matters foreign to, or not appearing of record, that is, not apparent upon the face of it; so that they cannot be assigned for error in the superior court, which can only proceed from what appears in the record itself; therefore if the whole record is not certified

or not truly certified, by the inferior court, the party injured thereby (in both civil and criminal cases) may allege a *diminution* of the record, and cause it to be rectified.

No diminution to be alleged on records out of inferior courts. Siderf. 403

After in *nullo est erratum* pleaded, neither party can allege diminution without leave of the court.

But the court may order a *certiorari ad informandum conscientiam curiæ*, to affirm, but not to reverse a judgment.

CHAP.

CHAP. XX.

The certiorari *to certify diminution of bill, bail, and warrant of attorney.*

GEORGE the third, by the graee of God, of *Great Britain*, *France*, and *Ireland*, king, defender of the faith, *&c.* To our trusty and well beloved *William* earl of *Mansfield*, our chief justice assigned to hold pleas in our court before us, greeting. Because in the record and proceedings, and also in the rendition of the judgment, of a plea which was in our court before us, by bill, between *Ann Hook*, and *John Gregory*, of a plea of trespass on the case, it is said manifest error hath happened, to the great damage of the said *John*, as by his complaint we have understood; the record and proceedings of which said judgment we have lately caused to be brought before our justices of our *Common Bench*, and our barons of our *Exchequer*, of the degree of the *coif*, to correct the errors in the same, according to the form of the statute, in such case made and provided, in the chamber of our *Excheqner* aforesaid; and the said *John*, appearing in the same *Exchequer Chamber*, hath said, that whereas by the record aforesaid, sent to the same justices and barons, it appears, that the said *Ann*, in *Easter* term, in the 20th year of the reign of his present majesty king *George* the third, exhibited into the said court of our said lord the king before the king himself, her bill against the said *John* in the plea aforesaid, and that

that the ſaid *John* was in the cuſtody of the marſhal of our marſhalſea, before us: nevertheleſs the ſaid *John* at or before the time of exhibiting the bill of the ſaid *Ann*, was not in the cuſtody of the marſhal of our marſhalſea, before us: neither was any bail ever filed for him in the ſaid court; nor any ſuch bill, and the continuances thereon indorſed in our ſaid court, of the ſame term, before us of record remaining. And that whereas by the record aforeſaid, ſo as aforeſaid ſent, it alſo appears, that the ſaid *Ann* conſtituted one *Richard Fen* her attorney againſt the ſaid *John* in the plea aforeſaid, nevertheleſs the ſaid *John* hath ſaid, that the ſaid *Richard Fen* had no warrant of attorney thereof on record filed: and we being willing to be certified of the premiſſes aforeſaid, in this behalf, command you, that the files of the bails of the county of *Middleſex*, and of the bills in the ſaid *Eaſter* term, in the 20th year aforeſaid, in your cuſtody; and alſo the rolls, and other memorandums of the warrants of attorney, of the ſame term, in your cuſtody of record, likewiſe remaining, being ſearched, what of the ſaid bail, bill and continuances thereon indorſed, and warrant of attorney aforeſaid, you ſhall find, to our juſtices and barons aforeſaid, immediately into the chamber of our *Exchequer* aforeſaid, you certify, together with this writ. Witneſs, *&c.* *

* Sir William de Grey, &c. writs &c. iſſuing out of the *Exchequer Chamber* are always witneſſed by the chief juſtice of the *Common Pleas*.

The answer of William *Earl of* Mansfield, the chief justice within named.

Having searched the files of bails of the county of Middlesex, *and also of the bills of* Easter *term within written, being in my custody of record; I find no bail or bill between the parties within written, in the plea within specified, filed of record: having searched likewise the rolls, and other memorandums of the warrants of attorney of the same term, between the parties within-written, being likewise in my custody on record, I there find no warrant of attorney filed on record. And this I certify to the justices of our lord the king of the* Common Bench, *and the barons of the Exchequer, within written, as I am commanded.*

Mansfield.

Keb. 211. Errors cannot be entered until the *certiorari* of diminution alledged, and the rule to assign errors is out.

The term after diminution is alledged, serve the rule to assign errors: after which the judgment may be affirmed as before mentioned: the plaintiff pays 8 *s.* on alledging diminution, and 16 *d. per fo.* for the transcript; and 8 *s.* onassigning errors, (to Mr. *Cecil*;) the writ of diminution issues only in special cases: and if the errors to be assigned are special, they must be drawn by the attorney, signed by counsel, and delivered to the clerk of the errors in the *Exchequer chamber*, on treble penny stamps.

In

In the Exchequer chamber.

Gregory *and* Hook.

Unless the plaintiff in the writ of error assigns errors, within eight days next after notice hereof given to the said plaintiff or his attorney, a nonsuit will be entered.

Rule to assign errors.

Philip Fonnereau,
clerk of the errors.

If the errors assigned are the *general errors*, the defendant may immediately plead in *nullo est erratum.*

After this plea the plaintiff is never suffered to amend *general errors.*

After defendant hath pleaded *in nullo est erratum*, neither party can alledge diminution without leave of the court; although the court may order *a certiorari ad informandum conscientiam curiæ*, to affirm, but not to reverse a judgment.

It is incumbent on the plaintiff, if he designs to have his errors argued, to give ten days notice to the clerk of the errors in the *Exchequer Chamber*, and to deliver four paper books to the judges of the court of *Common Pleas*; and the defendant is to deliver four paper books to the barons of the *Exchequer*, four days before the day of argument *.

Rule *Easter* 33 Car. II.

* See chapter XII. at the end.

CHAP. XXI.

Error assigned in the Exchequer chamber.

Entry of the record transmitted into Exchequer chamber.

AFTERWARDS, (to wit) *Monday* the 5th day of *June*, in the 20th year of the reign of our sovereign lord *George* the third, king of *Great Britain*, *&c.* a transcript of the record and proceedings aforesaid, between the parties aforesaid, of the plea aforesaid, with all things concerning the same, by means of a certain writ of our lord the king, for correcting errors, prosecuted by the said *John* against the said *Richard*, of and upon the premisses, by the court of the lord the king before the king himself here, was transmitted before the justices of our said lord the king of his court of *Common Bench*, and barons of the *Exchequer* of the said lord the king, of the degree of the *coif*, in the *Exchequer Chamber*, according to the form of the statute, made* in in the 27th year of the reign of the lady *Elizabeth* late queen of *England*. And the said *John* appearing in the *Exchequer Chamber* aforesaid, assigned certain matters for error in the record and proceedings aforesaid, and in giving the judgment aforesaid, for reversing the said judgment; to which the said *Richard* also appearing in the said court of *Exchequer*

Error assigned.

* In the parliament of the lady *Elizabeth* late queen of *England*, held at *Westminster* on the 23d day of *November*, in the 27th year, *&c.*

Chamber, pleaded, that there was no error either in the record and proceedings aforesaid, or in giving the judgment aforesaid. And afterwards, (to wit) on *Friday* the 10th day of *November*, in the 21st year of the reign of our said lord the king, as well the record and proceedings aforesaid, and the judgment aforesaid, given in form aforesaid, as also the matters by the said *John* for error assigned, being by the court of *Exchequer Chamber* maturely * examined, and fully understood, for that it seemed to the said court of *Exchequer Chamber*, that there was no error, either in the record and proceedings aforesaid, or in giving the judgment aforesaid. Therefore it was then and there considered by the said court of *Exchequer Chamber*, that the judgment aforesaid be in all things affirmed, and do stand in it's full force, strength, and effect; (the matters aforesaid for error assigned in any wise notwithstanding.) And it was further then and there considered by the said court, that the said *Richard* recover against the said *John* 18 *l.* by the court there adjudged to the said *Richard* by his assent, according to the form of the statute in that case made and provided, for his damages, costs, and charges, which he hath sustained by occasion of the delay of execution of the judgment aforesaid, by means of the prosecution of the said writ of error. And thereupon as well the record aforesaid, as the proceedings of the justices of the *Common Bench*, and barons

Plea *in nullo est erratum.*

Affirmance.

Remittance of the Record.

* Diligently.

of the *Exchequer* aforesaid, before them had of and upon the premisses, were remitted into the court of our said lord the king before the king himself, by the said justices and barons, according to the form of the statute in such case made and provided, and now remain in the said court of the said lord the king before the king himself.

Satisfaction acknowledged.

Afterwards, (to wit,) on *Tuesday* next after 15 days of Saint *Martin*, in the 21st year of the reign of the said lord the now king, before the king himself, at *Westminster* came the said *Richard*, by his attorney aforesaid, and acknowledged, that he had been satisfied by the said *John*, for the damages, costs, and charges aforesaid. Therefore let the said *John* be quit of the said damages, costs, and charges, &c.

Salk. 24. 736.

CHAP

CHAP. XXII.

Of the proceedings in the house of lords.

A WRIT brought in parliament returnable, [illegible] a day on which it is prorogued, [illegible] and that it is a *superfedeas*.

The lords have declared, and so is the law [illegible] day, that a writ of error doth not de[illegible] the prorogation of parliament; but [illegible] continue and are to be proceeded upon [illegible] as they stood at the dissolution of [illegible] parliament.

[illegible] a writ of error in parliament, [illegible] must be a petition to the king for his [illegible] which petition has the allowance of [illegible] attorney general, and then the king writes [illegible] of it, *fiat justitia*: whereupon the [illegible] error is made out by the chancery, [illegible] charges 5 *l.* for the kings warrant, (which [illegible] signed by him,) defraies his own fees.

[illegible] of errors in parliament are made return[illegible] peremptorily, or upon a prorogation *ad prox.* [illegible] because during the session they [illegible] usually, and have no vacation.

[illegible] of the returns are *infra sex septimanas*, 3 Reb. 256.

[illegible] the bail below pending a writ of error [illegible] parliament is a contempt, and breach of [illegible]

of the *Endorsee* aforesaid, before them and of and upon the premisses, were remitted into the court of our said lord the king before the king himself, by the said justices and barons according to the form of the Statute in such case made and provided, and now remain in the said court of the said lord the king before the king himself.

Satisfaction acknowledged.

WHEREUPON, (to wit,) on *Tuesday* next after 15 days of Saint *Martin*, in the 21st year of the reign of the said lord the now king, before the king himself, at *Westminster* came the said *Richard*, by his attorney aforesaid, and acknowledged, that he had been satisfied by the said *John*, for the damages, costs, and charges aforesaid. Therefore let the said *John* be quit of the said damages, costs, and charges, &c.

Sect. 24. 136.

CHAP. XXII.

Containing the proceedings in the house of lords.

ERROR brought in parliament returnable at a day on which it is prorogued: the court inclined that it is a *supersedeas*. 3 Keb. 231. Sid. 413.

The lords have declared, and so is the law at this day, that a writ of error doth not determine by prorogation of parliament; but they continue and are to be proceeded upon *in statu quo*, as they stood at the dissolution of the last parliament. Raym. 383.

To obtain a writ of error in parliament, there must be a petition to the king for his warrant; which petition has the allowance of the attorney general, and then the king writes at the top of it, *fiat justitiæ:* whereupon the writ of error is made out by the cursitor; who charges 5 *l.* for the kings warrant, (which is procured by him,) besides his own fees.

Writs of error in parliament are made returnable immediately, or on a prorogation *ad prox' parliament.* because during the session they sit continually, and have no vacation.

Most of the returns are *instanti parliamento.* 3 Keb. 256.

Suing the bail below pending a writ of error in parliament is a contempt, and breach of privilege. 1 Will. Rep. 685.

This writ, when made out by the curſitor, muſt be taken to and allowed by Mr. *Way*, the clerk of the errors in the *King's Bench*, who takes 4 *l.* for the allowance; a copy of the allowance muſt be ſerved in the ſame manner as in other writs of error.

The chief juſtice of the *King's Bench* takes the record and tranſcript to the lords, in full parliament, with whom, after they are examined, he leaves the latter, but the record is brought back again: no *ſcire facias* iſſues on this writ; but on motion made in the houſe by a peer, on behalf of the defendant in error, a day is appointed for the plaintiff in error to aſſign errors. He is allowed eight days for that purpoſe; and if errors are not aſſigned in that time, the clerk of the parliament will grant *remittitur*.

If plaintiff in error alledges *diminution*, and prays a *certiorari*, the ſame is to be iſſued without any motion, and to be returned in ten days; which if not done, or good cauſe ſhewn to the houſe to the contrary, the plaintiff will loſe the benefit of his writ.

To obtain a hearing, the plaintiff in error muſt get a peer to move the houſe, that on aſſigning errors, the defendant may appear to make his defence.

After iſſue joined *in nullo eſt erratum*, get a peer to move the houſe to appoint a day for hearing the errors. At which day both par-

tie

the point argued by counsel, usually was on a fact, none is not allowed. If pleaded facts are admitted by both parties, or either party, to be true, they must be signed by Counsel. On the hearing, the lords either affirm or reverse the judgment, on which the clerk of the parliament remands the transcript of the record, with the K. B. with the allowance or reversal to be entered on record of the said court, which awards execution, &c.

Dyer 165.

After verdict, error brought in the King's Bench, on a judgment of the Common Pleas, and bail put in; if such judgment be affirmed, and error afterwards brought in the house of lords, there must be a new recognizance; and the same if brought in parliament from the Exchequer Chamber, or a judgment of the King's Bench, affirmed by the Exchequer Chamber.

Sir. 327. T. 3 Geo. I. Colebrooke v. Diggs.

Upon a suit by original in the King's Bench, and writ of error in the house of lords brought thereon; if the judgment is reversed, the lords will give the same judgment, as the court of King's Bench should have pronounced.

Ibid. 127.

The lords examine the errors, with the assistance of the judges, in all affairs of weight and nicety. If the judgment is reversed, the chancellor, by order of the house, pronounces execution accordingly; If affirmed, the record is remanded, and the court of King's Bench will issue execution.

Cases

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This writ, when made out by the [illegible], must be taken out and allowed by Mr. [illegible], the clerk of the crown in the *King's Bench*, who takes 4 l. for the allowance; a copy of the allowance must be served in the same manner as in other writs of error.

The chief justice of the *King's Bench* takes the record and transcript to the lords, in parliament, with whom, after they are returned, he leaves the latter, but the former is brought back again: no *fiere facias* issues on this writ, but on motion made in the house by a peer, on behalf of the defendant in error, a day is appointed for the plaintiff in error to assign errors. He is allowed eight days for that purpose; and if errors are not assigned in that time, the clerk of the parliament will grant *scire facias*.

If plaintiff in error alledges *diminution*, and prays a *certiorari*, the same is to be issued without any motion, and to be returned in [illegible] days; which if not done, or good reason shewn to the house to the contrary, the plaintiff will lose the benefit of his writ.

To obtain a hearing, the plaintiff in error must get a peer to move the house, that on assigning errors, the defendant may appear to make his defence.

After issue joined *in nullo est erratum*, the peer to move the house to appoint a day for hearing the errors. At which day both [illegible]

ties must attend by counsel, usually two on a side, more is not allowed. If printed cases are delivered by both parties, or either party, to the lords, they must be signed by counsel. On the *hearing*, the lords either affirm or reverse the judgment; on which the clerk of the parliament remands the transcript of the record, into the *K. B.* with the affirmance or reversal to be entered on record of the said court, which awards execution, *&c.* Dyer 385.

After verdict, error brought in the *King's Bench*, on a judgment of the *Common Pleas*, and bail put in; if such judgment be affirmed, and error afterwards brought in the house of lords, there must be a new recognizance; and the same if brought in parliament from the *Exchequer Chamber*, on a judgment of the *King's Bench*, affirmed by the *Exchequer Chamber*. Salk. 97. Str. 527. T. 8 Geo. I. Colebroke v. Diggs.

Upon a suit by original in the *King's Bench*, and writ of error in the house of lords brought thereon; if the judgment is reversed, the lords will give the same judgment, as the court of *King's Bench* should have pronounced. 4 Mod. 127.

The lords examine the errors, with the assistance of the judges, in all affairs of weight and nicety. If the judgment is *reversed*, the chancellor, by order of the house, pronounces execution accordingly; If *affirmed*, the record is remanded, and the court of *King's Bench*, will issue execution. Instr. Cl. par. 1. p. 301.

Upon

3 Bur. Rep. 1823.

Upon error in the house of lords, on judgment in ejectment in the *King's Bench*, the court will compel the plaintiff in error, to enter into a rule to restrain him from committing waste *pendenti lite*.

Shower's cases in parliament 12.

The question was, (upon general errors assigned in parliament) if these words, *He is disaffected to the government* (spoken of a justice) be *actionable?* upon debate, the judgment was reversed, the words being not actionable.

Assignment of errors in parliament.

Afterwards, (that is to say) on the first day of *December*, in the 21st year of the reign of our sovereign lord *George* the third, king of *Great Britain*, *&c.* before the king himself in parliament, the said *John*, by *John Den* his attorney, comes; and says, that in the record and process aforesaid, and also in giving the judgment aforesaid, there is manifest error in this, (to wit) that the declaration aforesaid, and the matters therein contained, are not sufficient in law for the said *Richard* to have and maintain his aforesaid action against the said *John*; therefore in that there is manifest error: there is also error in this (to wit) that by the record aforesaid, it appears that the judgment aforesaid, in form aforesaid given, was given for the said *Richard* against the said *John:* whereas, by the law of the land, the said judgment ought to have been given for the said *John*, against the said *Richard*, and the said *John* prays that the judgment

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If a writ of error in the house of lords, on judgment in ejectment in the King's Bench, the court will compel the plaintiff in error, to enter into a rule to release him from confining walls *instead thereof*.

The question was, (upon general errors assigned in parliament) if these words, *Hath ever affected the government* (spoken of a pelloty) be actionable? upon debate, the judgment was reversed, the words being not actionable.

Assignment of errors in parliament.

Afterwards, (that is to say) on the 3d day of *December*, in the 41st year of the reign of our sovereign lord *George* the third, King of *Great Britain*, &c. before the king himself in parliament, the said *John*, by *John Fox* his attorney, comes and says, that in the record and proceeds aforesaid, and also in giving the judgment aforesaid, there is manifest error in this, (to wit) that the declaration aforesaid, and the matters therein contained, are not sufficient in law for the said *Richard* to have and maintain his aforesaid action against the said *John*; therefore in that there is manifest error: there is also error in this (to wit) that by the record aforesaid, it appears that the judgment aforesaid, in form aforesaid given, was given for the said *Richard* against the said *John*; whereas, by the law of the land, the said judgment ought to have been given for the said *John*, against the said *Richard*, and the said *John* prays that the judgment

ment aforesaid, for the errors aforesaid, and other errors in the record and proceedings aforesaid, may be reversed, annulled, and altogether held for nothing, and that he may be restored to all things which he hath lost by occasion of the said judgment, *&c.*

Assignment of errors in parliament, after affirmance in the Exchequer chamber.

Afterwards (that is to say) on the eighth day of *December*, in the 21st year of the reign of our sovereign lord *George* the third, king of *Great Britain*, *&c.* before the said lord the king himself, and peers, and great men, in this present parliament assembled, at *Westminster*, in the county of *Middlesex*, the said *John*, by *John Den* his attorney, comes, and says, that in the record and proceedings aforesaid, as also in giving and *affirming* the judgment aforesaid, there is manifest error, in this, (to wit) that by the record aforesaid, it appears, that the judgment aforesaid, given by the said court, of our said lord the king, before the king himself, at *Westminster* aforesaid, was given for the said *Richard* against the said *John:* whereas, by the law of the land, the said judgment ought to have been given for the said *John* against the said *Richard*, therefore in that there is manifest error; there is also error, in affirming the said judgment, because he says, that the judgment aforesaid was affirmed in the court of our lord the king of *Exchequer Chamber*, at *Westminster* aforesaid, before

before the justices of the *Common Bench*, and the barons of the said *Exchequer*; whereas no such affirmance of the said judgment ought to have been given thereon, but that by the law of the land the said judgment ought to have been reversed: and therefore in that there is manifest error. And the said *John* prays that the judgment aforesaid for the errors aforesaid, and other errors in the record and proceedings aforesaid, may be reversed, annulled, and intirely held for nothing, and that he may be restored to all things which he hath lost, by occasion of the said judgment and the affirmance thereof, as aforesaid, and that the said *Richard* may rejoin to the errors above assigned, *&c.*

1 Vent, 100. A writ of error brought first in the *Exchequer Chamber*, and discontinued; then another sued out in parliament, this second writ is a *supersedeas*.

Writ of Error, *tam in redditione judicii, quam in adjudicatione executionis.*

Cr. Jac. 384. Raym, 100. Bail may bring this writ of error upon a judgment recovered against them by *scire facias*.

Idem. But bail cannot join the principal with himself, or themselves, *in a writ of error*. Error brought by bail, on a judgment against them by *scire facias*, in an inferior court; it was *tam in redditione judicii* against the principal: *quam in adjudicatione* against the bail; but was quashed

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before the judges of the *Common Bench*, [illegible] the bailiffs of the [illegible] Exchequer, [illegible] no such affirmance of the said judgment [illegible] to have been given thereon, but that in the law of the land the said judgment ought to have been reversed; and the errors assigned there is manifest error. And the said [illegible] prays that the judgment aforesaid be [illegible] errors aforesaid, and other errors in the record and proceedings aforesaid, may be reversed, annulled, and utterly held for nothing, and that he may be restored to all things which he hath lost, by occasion of the said judgment and the affirmance thereof, as aforesaid, and that the *bailiffs* may reply to the errors above assigned, &c.

1 West. 100. A writ of error brought first in the *Exchequer Chamber*, and affirmed there, then another sued out in *Parliament*, this second writ is a *superfluous*.

Writ of Error, *lies in redditione judicii, or in adjudicatione executionis.*

Co. Lit. 288. Kitch. 120. Bail may bring this writ of error upon a judgment recovered against them by *fieri facias*.

Ibid. But bail cannot join the principal with themselves, or themselves, *in a writ of error*. Error brought by bail, on a judgment against them by *fieri facias*, in an inferior court; it was *for in redditione judicii* against the principal; *quare in adjudicatione* against the bail; but was quashed

quashed against the principal, and the bail proceeded in order to reverse the judgment against them.

This writ lies on a judgment for the plaintiff in the *King's Bench*, afterwards affirmed in the *Exchequer Chamber*, and an award of execution in the *King's Bench*, on a *scire facias* brought by plaintiff. The defendant cannot have a writ of error in the *Exchequer Chamber*, *tam in redditione judicii, quam in adjudicatione executionis* *, for the merits of the first judgment have been examined there, and such second writ is no *supersedeas* to the execution, which if sued out, is no contempt.

Salk. 263. 1 Vent. 168. Cro. Car. 300.

Otherwise if there had been no writ of error before on the original judgment.

CHAP.

CHAP. XXIII.

A writ of error to reverse a judgment given in the King's Bench *in* Ireland.

TO bring a writ of error in the *King's Bench* in *England*, to reverse a judgment given in the *King's Bench* in *Ireland* *, a writ must be procured from the cursitor, directed to the chief justice of the *King's Bench* in *Ireland*, requiring him to summon the plaintiff in the action there to appear in the *King's Bench* in *England*, to answer the errors; whereupon a transcript of the record is sent over, (not the record itself.)

When the transcript comes over from *Ireland*, it is lodged with Mr. *Heberden*, of whom the agents on both sides procure copies. And if the plaintiff in error doth not bring in the transcript, or a certificate thereof from Mr. *Heberden*, the cursitor will make out a writ *de executione judicii*, directed to the chief justice in *Ireland*. The House of Peers in *Ireland* hath no jurisdiction either to affirm or reverse any judgment or decree made there.

Stat. 6 Geo. I. c. 5. s. 5.

To compel plaintiff in error to assign errors.

On motion the court will order the plaintiff to assign errors within a week after service of the rule.

See page 2.

As

and a *the service thereof*. If the plaintiff is dead, his attorney or agent cannot be found, the court (on motion and affidavit) will order that sticking up the rule in the *King's Bench* office shall be good service on the plaintiff in error.

There must be a rule of court to assign errors, for there is no *pure facies* to hear errors in this case.

Assignment.

On assignment of errors from *Ireland* there must be an affidavit annexed, verifying the same.

Joining in error.

The plaintiff in error must move the court for a rule for defendant in error to join in error, and he has four days after service of rule to join in error.

Cro. Car. 368. 1 Salk. 322.

When the errors are argued, if the judgment is reversed, a writ must be sent to the chief justice in *Ireland*, commanding him to reverse it, and to award execution; for that the judgment is not actually reversed but by these. And when the judgment in *Ireland* is affirmed in *England*, no writ of execution can be granted here; but, on affirmance of the judgment, a writ, recording the proceedings, is made out, directed to the judges of the *King's Bench* in *Ireland*, requiring them to issue process of execution.

Assign-

CHAP. XXIII.

A writ of error to reverse a judgment given in the King's Bench *in* Ireland.

TO bring a writ of error in the *King's Bench* in *England*, to reverse a judgment given in the *King's Bench* in *Ireland*, a writ must be procured from the office, directed to the chief justice of the *King's Bench* in *Ireland*, requiring him to summon the plaintiff in the action there to appear in the *King's Bench* in *England*, to answer the errors; whereupon a transcript of the record is sent over, (not the record itself.)

When the transcript comes over from *Ireland*, it is lodged with Mr. *Heberden*, of whom the agents on both sides procure copies. And if the plaintiff in error doth not bring in the transcript, or a certificate thereof from Mr. *Heberden*, the cursitor will make out a writ *de executione judicii*, directed to the chief justice in *Ireland*. The House of Peers in *Ireland* hath no jurisdiction either to affirm or reverse any judgment or decree made there.

Stat. 6 Geo. I. c. 3. § 5.

To compel plaintiff in error to assign errors.

On motion the court will order the plaintiff to assign errors within a week after service of the rule.

See page 2.

As to the service thereof. If the plaintiff in error, his attorney or agent, cannot be found, the court (on motion and affidavit) will order that sticking up the rule in the *King's Bench* office shall be good service on the plaintiff in error.

There must be a rule of court to assign error, for there is no *scire facias* to hear errors in this case. Note.

On assignment of errors from *Ireland* there must be an affidavit annexed, verifying the same.

The plaintiff in error must move the court for rule for defendant in error to join in error, and he has four days after service thereof to join in error. Joining in error.

When the errors are argued, if the judgment is reversed, a writ must be sent to the chief justice in *Ireland*, commanding him to reverse it, and to award execution; so that the judgment is not actually reversed here, but there. And when the judgment of *Ireland* is affirmed in *England*, no writ of execution can be granted here; but, on affirmance of the judgment, a writ, reciting all the proceedings, is made out, directed to the judges of the *King's Bench* in *Ireland*, requiring them to issue process of execution. Cro. Car. 368. 1 Salk. 321

Assign-

Assignment of error *on a judgment after affirmance in* Ireland.

Afterwards, to wit, on *Tuesday* next after fifteen days of St. *Martin*, in this same term, before our lord the king at *Westminster*, comes the said *John*, by *John Den* his attorney, and says, that in the record and proceedings aforesaid, and in giving the judgment aforesaid, and also in affirming the same, there is manifest error in this, to wit, that by the record and affirmance aforesaid, it appears, that the judgment aforesaid, in form aforesaid given, was given and affirmed for the said *Richard* against the said *John:* whereas by the law of the land of the said kingdom of *Ireland*, the said judgment ought to have been given for the said *John* against the said *Richard*,—therefore in that there is manifest error. Wherefore *the said* John *prays*, that the judgment aforesaid, and the affirmance aforesaid, for the errors aforesaid, and other errors in the record and proceedings aforesaid, may be reversed, annulled, and altogether held for nothing; and that the said *John* may be restored to all things which he hath lost by occasion of the said judgment, *&c.*

For a joinder hereto, and all subsequent proceedings, see Error in the *King's Bench.*

CHAP.

CHAP. XXIV.

Supplemental Cases determined in the courts of King's Bench *and* Common Pleas.

Abatement. *Error* abates by the death of the plaintiff in error, but not of the defendant, either before or after errors assigned.

Judgment in the *Common Pleas* against four in trespass, who brought error in the *King's Bench*; after the record was certified one of the plaintiffs in error died; the writ abated, and the plaintiff in the original action had execution on suggesting the death of the party, upon record, without suing out *new facias*.

Where error abates by the act of the plaintiff in error, if he sues out a new writ of error it is no *supersedeas*, the defendant may have execution. Otherwise, when the error abates by the act of *God* or without fault of the party.

If error abates by the death of the parties, or chief justice, the second writ shall be a *supersedeas*.

But in these cases, on error abating by the death of the chief justice, leave was given to take out execution. The writ of error

Pasch. 6 Geo. II. B. R. Latch 57, 58.

2 Lech. 466.

1 Burrow 139. Noys 149.

Assignment of error on a judgment after affirmance in Ireland.

Afterwards, to wit, on Tuesday next after fifteen days of St. *Martin*, in the same term, before our lord the king at *Westminster*, comes the said *John*, by *John Doe* his attorney, and says, that in the record and proceedings aforesaid, and in giving the judgment aforesaid, and also in affirming the same there is manifest error in this, to wit, that by the record and affirmance aforesaid it appears, that the judgment aforesaid, in form aforesaid given, was given and affirmed for the said *Richard* against the said *John*, whereas, by the law of the land of the said kingdom of *Ireland*, the said judgment ought to have been given for the said *John* against the said *Richard*,—therefore in that there is manifest error. Wherefore the said *John* prays, that the judgment aforesaid, and the affirmance aforesaid, for the errors aforesaid, and other errors in the record and proceedings aforesaid, may be reversed, annulled, and altogether held for nothing; and that the said *John* may be restored to all things which he hath lost by occasion of the said judgment, &c.

For a plea here to, and all subsequent proceedings, see Error in the Exchequer.

CHAP. XXIV.

Supplemental Cases determined in the courts of King's Bench *and* Common Pleas.

A Batement. Error abates by the death of the plaintiff in error, but not of the defendant, either before or after errors assigned. Salk. 219.

Judgment in the *Common Pleas* against four in trespass, who brought error in the *King's Bench:* after the record was certified one of the plaintiffs in error died; the writ abated, and the plaintiff in the original action had execution on suggesting the death of the party upon record, without suing out *scire facias.* Ibid.

Where error abates by the act of the plaintiff in error, if he sues out a new writ of error it is no *supersedeas*, the defendant may have execution. Otherwise, when the error abates by the act of *God* or without fault of the party. 1 Vent. 353. Godb. 66, 68. Latch 57, 58.

If error abates by the death of the parties, or chief justice, the second writ shall be a *supersedeas.* 3 Keb. 466.

But in these cases, on error abating by the death of the chief justice, leave was given to take out execution. The writ of 1 Barnes's Notes 139 140.

Pract. Reg. in C. P. 195. 196.

error not being returned, and ſigned by the chief juſtice, becomes ineffectual by his death.

The writ of error being become ineffectual by the death of the chief juſtice, the return not being ſigned by him, and conſequently the record not removed; yet plaintiff cannot take out execution without motion and leave of the court.

Where a writ of error determines in the *Exchequer Chamber* by *abatement*, or diſcontinuance, judgment is not again in the *King's Bench* without a *remittitur*.

2 Mod. 285.

In a writ of error, if one be dead, he muſt be named.

Yelv. 208. 1 Vent. 34. Siderf. 419.

If the defendant in error dies, the plaintiff in error muſt iſſue a *ſcire facias* againſt the executors to hear errors; and then, and not before, may proceed to reverſe the judgment.

Barnes's Notes 347. 20 G. II. Wright v. Treweeke.

But if a writ of error is brought merely for delay, the plaintiff will not be in ſuch a hurry: for which reaſon the executor of the defendant in error, in order to compel plaintiff to aſſign errors, muſt ſue out a *ſcire facias quare executionem non*, which forces him. If errors were aſſigned before the defendant's death, the executor muſt proceed as if defendant was living, till judgment is affirmed, and then revive by *ſcire facias*; but cannot take out execution pending the writ of error.

In

Vent. Rep. 2 C. P. 196.

error not being ratified, and signed by the chief justice, becomes ineffectual on his death.

The writ of error being become ineffectual by the death of the chief justice, the error not being signed by him, and consequently the record not removed; yet plaintiff cannot take out execution without motion and leave of the court.

Where a writ of error determines in the *Exchequer Chamber* by *abatement*, or *discontinuance*, judgment is not again in the *King's Bench* without a *remittitur*.

2 Mod. 283.

In a writ of error, if one be dead, he must be named.

Yelv. 208. 1 Ven. 24. Raym. 419.

If the defendant in error dies, the plaintiff in error must sue a *fieri facias* against the executors to bear errors; and then, and not before, may proceed to reverse the judgment.

But if a writ of error is brought merely for delay, the plaintiff will not be in such a hurry; for which reason the executors of the defendant in error, in order to compel plaintiff to assign errors, must sue out a *fieri facias quare executionem non*, which lies against him. If errors were assigned before the defendant's death, the executor must proceed as if defendant was living, till judgment be affirmed, and then revive by *scire facias*, but cannot take out execution pending the writ of error.

Raym. Rep. 347. 2 G. G. Wright v. Trevelyan.

In error, the nonsuit of one party shall not hurt the other, because they are not to recover, but to discharge themselves of a personalty. 6 Rep. Ruddock's case.

If a judgment be reversed for error, the plaintiff may commence a new action for the same matter; and he shall have the advantage of the commencement of his first action, in case the statute of limitations should be pleaded to the *second*, provided such second action is brought within a year and a day. Idem.

Amendment of the return of the sheriff after a writ of error brought 3 *Levins* 361.—And various other cases of amendments and denials of amendments, in *March Rep.* 72. *Hob.* 317. *Cr. Ja.* 119, 131, 265, 429, 444, 628. 8 *R. Blackamore's case. Cr. Car.* 38. *Cr. Eliz.* 172, 435, 462. 1 *Leon.* 276. 1 *Brownl.* 66, 75. 8 *Rep.* 162. 2 *Mod. Rep.* 316. 3 *Keb.* 466. *Str.* 837. *and* 892.

Want of pledges at common law is error, and not aided by the statute 18 *Eliz.* Cr. Jac. 414. Cr. Car. 91, 92, 594. Raym. 51.

Not praying of damages is no error, being but matter of form. 1 Sanders 98.

Error brought by bail on a judgment by *scire facias.* They cannot assign for error that there is no *ca. sa.* returned against the principal, for they might have pleaded it to the *sci. fa.* and here the return of two *nihils* amounts to a summoms, and is all one Tr. 1651. Barcock and Thomson. 4 Mod. Rep. 314.

with it; and this is a matter of record and not matter of fact.

Cr. Eliz. 669. The error assigned was, that the defendant appeared by *J. S. Attornatum suum*, when there was not any such *J. S. in rerum naturâ*. The defendant pleaded in *nullo est erratum*, and so confesseth it. Yet the court held it to be no error, for it is against the record: but the plaintiff in error might have assigned for error, that *J. S.* had no *warrant of attorney*.

Hob. 90. Where the roll is faulty the writ of error shall not help it.

Cr. Eliz. 333. Hale super, Lit. 3. Poss. 25. El. 242. Error of a judgment in debt, for that in the writ he was named *son and heir apparent*; and in the declaration, *son and heir*, generally; and for this variance the judgment was reversed.

The same doctrine is also held *vice versa*, that is, if a man is stiled *son and heir* generally in one place, and *son and heir apparent* in another, the judgment shall be reversed.

6 Ed. IV. 19. 7 Hen. IV. 7. Theol. 50. Show. 392. Dyer 88. And again, if the title of *knight* is given to a person who is a *baronet*, this is also error, and the judgment shall be reversed; for that it doth not appear that they are the same persons: and in other similar cases judgments may be reversed.

Pal. 225. If a feme covert appear as vouchee, being under age, it is error.

with it; and this is a matter of record and not matter of fact.

Cr. Eliz. 149. The error assigned was, that the defendant appeared by *J. S. Attornatus ipsius*, when there was not any such *J. S. in rerum natura*. The defendant pleaded in *nullo est erratum*, and so confessed it. Yet the court held it no be no error, for it is against the record; but the plaintiff in error might have assigned for error, that *J. S.* had no *warrant of attorney*.

Hob. 94. Where the roll is faulty the writ of error shall not help it.

Cr. Car. 115. Error of a judgment in debt, for that in the writ he was named *Jon and Jan* appearer, and in the declaration, *Jon and Jan*, generally; and for this variance the judgment was reversed.

Hob. Rep. 114. The same doctrine is also held *vice versa*, that is, if a man is filed *Jon and Jan* generally in one place, and *Jon and Jan* appeared in another, the judgment shall be reversed.

Cro. E. 10. Hen. IV. 10. Theal. 56. Dyer 25. And again, if the title of *knight* is given to a person who is a *baron*, this is an error, and the judgment shall be reversed; for that it doth not appear that they are the same persons; and in other similar cases judgments may be reversed.

Yd. 129. If a feme covert appear as vouchee, being under age, it is error.

Error lies for executors to reverse outlawry in felony against the testator; and if reversed they shall have execution of his goods. 1 Leon. 125, 325.

If a man be outlawed, and no mention made what county he was of, this may be reversed without a writ of error; but if outlawed without his addition, where addition ought to be given, he must have a writ of error; although the statute saith such outlawry shall be void. 8 H. 6, 37. 11 H. 6. 15. b.

An action of debt on a judgment in *B. R.* was brought after a writ of error allowed. Vent. 34. Dyer 32. v. 18. 4 Mod. 247. 3 Bur. 1549.

The defendant pleaded the writ of error depending, and the record certified into the *Exchequer Chamber*.

The plaintiff demurred, the demurrer was held good, and the defendant ruled to answer over. An action of debt will lie in this case, because by the writ of error the transcript only, and not the record itself, is removed: for if the judgment should be affirmed in the *Exchequer Chamber*, the execution is awarded in *B. R.* where the record of the original judgment remains.

The plaintiff may proceed to judgment in his action of debt on the former judgment, but cannot take out execution till error determined. Prac. Reg. in c. 55. 182. S. P.

1 Barnes's notes 134, 140, 143. Rep. & Caſ. of Pract. in C. P. 130, 159. S. C. Pract. Reg. in C. B. 183, 186. S. P.

Pending a writ of error, an action was brought on the judgment; and after judgment therein, execution was levied: *per cur'*; defendant might have moved to ſtay proceedings in the action on the judgment, pending the writ of error, which is always granted; but having made no application the plaintiff is regular.—After judgment in an action of debt on a former judgment, and *ca. ſa.* delivered to the ſheriff, defendant moved to ſtay execution pending a writ of error brought to reverſe the former judgment. Shew cauſe. *Per cur'*, the motion comes too late, it ought to be before judgment in the latter action.

1 Barnes's notes 314.

A writ of error being brought before the exigent executed, ſtays the proceedings to outlawry.

Ibid. 141. Pract. Reg. in C. P. 149.

Joint action againſt ſeveral defendants, the plaintiff obtained a verdict againſt four of the defendants, and had 20 *l.* damages; he recovered judgment by default againſt another defendant, and 5 *s.* damages; the four defendants brought a writ of error in the name of the laſt defendant, who was not bound to put in bail thereon, becauſe the judgment againſt him who was by default. Leave was given to take out execution againſt the other four defendants notwithſtanding the writ of error.

Rep. & Caſ. of Pract. in C. P. 35. E. 13 G. 1. Jennings v. Weſt.

The defendant ſuffered judgment by default, and ſtaid till after execution was ſent into *Dorſetſhire*, and then got a writ of error allowed, and ſerved the agent with the allow-

case. And although it was impossible to stay the execution in *Dorsetshire*, the writ having been sent down some time before, yet the court set aside the executions, and granted restitution, without costs; for the allowance of a writ of error is a *supersedeas* from the time of the allowance, though the sheriff executes the writ before notice was given; and yet neither the plaintiff, or his attorney, agent, or sheriff, were blameable for any misconduct.

Writ of error is a *supersedeas* from the allowance, but no contempt till notice. In the last case, it is said a writ of error is a *supersedeas* from the sealing, though no contempt is incurred till after notice given of the allowance.

But that doctrine is contradicted: for the court, after consideration, determined, that writ of error is not a *supersedeas* from the sealing, but from the delivery to the clerk of the errors, according to the rule, *M.* 18 *Car.* In this case judgment was signed 28 *Oct.* 29 *Oct.* between five and six in the evening, the sheriff seised the defendant's goods by a *fieri facias*, which the defendant moved to set aside, a writ of error having passed the great seal in the morning of the 29th *Oct.* but it was not allowed before the *fieri facias* was executed. The question was, from what time the writ of error is to be deemed a *supersedeas*. The court determined as above.

1 Rand. 144. 146, 147. Rep. & C. of Pract. in C. B. 158. 159. E. C. Pract. Reg. in C. B. 182. 186. E. P.

Pending a writ of error, an action was brought on the judgment, and there judgment thereon, execution was levied; per curiam defendant might have moved to stay proceedings in the action on the judgment, pending the writ of error, which is always granted, but having made no application the proceeding is regular.—After judgment in an action, error on a former judgment, and *ca. sa.* delivered to the sheriff, defendant moved to stay execution pending a writ of error brought to reverse the former judgment. Sitting in *Banco*, the motion comes too late, it ought to be before judgment in the latter action.

1 Rand. 144.

A writ of error being brought before the *fieri facias* executed, stays the proceedings in outlawry.

1 Rand. 147. Pract. Reg. in C. P. 146.

Joint action against several defendants; plaintiff obtained a verdict against four of the defendants, and had 20*l.* damages; he recovered judgment by default against another defendant, and 5*l.* damages; the four defendants brought a writ of error in the name of the last defendant, who was not bound to put in bail thereon, because the judgment against him was by default. Leave was given to take out execution against the other four defendants notwithstanding the writ of error.

Rep. & C. of Pract. in C. P. 34. E. 11 G. 1. Jennings v. Wall.

The defendant suffered judgment by default, and filed till after execution was sued into *Derbyshire*, and then got a writ of error allowed, and served the agent with the allowance

ance. And although it was impossible to stay the execution in *Dorsetshire*, the writ having been sent down some time before; yet the court set aside the execution, and ordered restitution, without costs: for the allowance of a writ of error is a *supersedeas* from the time of the allowance, though the sheriff executes the writ before notice was given; and yet neither the plaintiff, or his attorney, agent, or sheriff, were blameable for any misconduct.

Writ of error is a *supersedeas* from the allowance, but no contempt till notice. In the last case, it is said a writ of error is a *supersedeas* from the sealing, though no contempt is incurred till after notice given of the allowance.

1 Barnes's notes 275, 314.

But that doctrine is contradicted: for the court, after consideration, determined, that a writ of error is not a *supersedeas* from the sealing, but from the delivery to the clerk of the errors, according to the rule, *M.* 28 *Car.* 2.—In this case judgment was signed 28 *Oct.* & 29 *Oct.* between five and six in the evening, the sheriff seised the defendant's goods by a *fieri facias:* which the defendant moved to set aside, a writ of error having passed the great seal in the morning of the 29*th Oct.* but it was not allowed before the *fieri facias* was executed. The question was, from what time the writ of errror is to be deemed a *supersedeas.* The court determined as above.

2 Barnes's notes 164, 170. Morton v. Stevens, M. 15 Geo. 2.

M. S. See 5 Mod. 67.

If the plaintiff in error surrenders himself, or is surrendered by the bail in the original action, to prison, where he lies for upwards of two terms without being charged in execution; he is *not* supersedable; but if he wants to obtain a *supersedeas*, he must first of all take the necessary steps for discontinuing the writ of error; for, while that continues in force, no farther steps can be taken in the first action by either party.

J. BURLAND.

Rep. & Cas. of Pract. in C. P. 54.

Judgment by *cognovit actionem*, signed after the return of the writ of error; execution set aside, and restitution to be made; the plaintiff's attorney having promised to sign judgment on a certain day, which was before the return of the writ of error, but did not. The plaintiff's attorney ordered to sue out a new writ of error at his own costs.

Ibid. 46.

Judgment in *ejectment*, and error brought; the plaintiff in ejectment may bring an action for the mesne profits, and proceed to judgment, but not to execution till error determined.

Latch. 212.

In *ejectment* a writ of error lies before the execution of a writ of inquiry of damages; because in this case the judgment already is perfect to recover the *term*.

1 Barnes's notes 133.

If final judgment be not signed till a subsequent term after error allowed, execution regular.

Error

Lord Mansfield. If a writ of error be allowable after the return-day of term, and judgment be signed on some term, execution cannot be taken out.

1 Burrow's notes 134.

Motion to set aside an execution taken out after the expiration of the writ of error allowed, in which the writ of error was returned before the final judgment was signed; and therefore the court held, that it cannot remove the record of this judgment; and denied the motion.

Rex & Cul. Hilt. Ta C. P. 88.

If the writ of error had been returnable since the last return of the term, in which judgment was signed, it would have removed the record of such judgment having relation to the day in bank.

Ibid.

Says, a motion was made to set aside an execution issued after a writ of error allowed, and notice thereof given to plaintiff's attorney; it appeared that an interlocutory judgment was signed, and a writ of inquiry executed, in *Michaelmas* term; and a writ of error was then allowed, and notice given; but the final judgment was not signed till the beginning of *Hilary* term. Court: held the execution to be regular; the interlocutory judgment not being removed by the writ of error, and the final judgment being signed in a subsequent term, was not removed. Rule refused to make any rule.

1 Burrow's notes 134. 8 C. Hil. 92.

After writ of error allowed and served, the sheriff to the judgment executed a *fieri facias* for want of bail being put in within four days; the defendant moved to set it aside.

1 Burrow's notes 135. Incledon v. Clarke, in error. K. v. Gow.

If the plaintiff in error intermarry pending the suit, or is surrendered up the bail in the original action, to petition, where he has the benefit of two terms exclusive being charged in execution; he is not supersedable; but if he chuse to obtain a *superedeas*, he must first of all take the necessary steps for discharging the writ of error; for, while that continues in force, no further steps can be taken in the first action by either party.

J. BURLAND.

Judgment by *cognovit actionem*, signed since the return of the writ of error; execution set aside, and restitution to be made; the plaintiff's attorney having promised to sign judgment on a certain day, which was before the return of the writ of error, but did not. The plaintiff's attorney ordered to sue out a new writ of error at his own costs.

Judgment in *ejectment*, and error brought; the plaintiff in ejectment may bring an action for the mesne profits, and proceed to judgment, but not to execution till error determined.

In *ejectment* a writ of error lies before execution of a writ of inquiry of damages, because in this case the judgment already is perfect to recover the term.

If final judgment be not signed till a subsequent term after error allowed, execution regular.

Key, 6 Cas. of Pract. in C. P. 94.

Ibid. 48.

Lutch. 414.

1 Barnes's notes 133.

Error returnable essoin-day of term, and judgment signed of same term, execution cannot be taken out. 1 Barnes's notes 134.

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If the writ of error had been returnable after the first return of the term, in which judgment was signed, it would have removed the record; such judgment having relation to the day in bank. Ibid.

Says, a motion was made to set aside an execution issued after a writ of error allowed, and notice thereof given to plaintiff's attorney: it appeared that an interlocutory judgment was signed, and a writ of inquiry executed, in *Michaelmas* term; and a writ of error was then allowed, and notice given; but the final judgment was not signed till the beginning of *Hilary* term. *Cur':* held the execution to be regular; the interlocutory judgment *not being removed* by the writ of error, and the final judgment being signed of a subsequent term, was not removed. *Ergo* refused to make any rule. 2 Barnes's notes 133. S. C. 1 Lil. 552.

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2 Rol. Abr. 491. aſide, ſuggeſting that the plaintiff could not regularly take out execution until after certificate from the clerk of the errors. *Cur'*: held ſuch certificates not eſſentially neceſſary before taking out execution, though frequently taken out of caution. The ſtat. 16 & 17 *Car.* II. is poſitive as to bail within four days. Bail ought to have been put in before the motion. *Cur'*: diſcharged the rule to ſhew cauſe. A queſtion aroſe, whether, after bail perfected, the goods can be reſtored? held that if defendant's perſon be taken by a *ca ſa.* and bail in error afterwards perfected, the perſon ſhall be diſcharged; but in caſe of a *fieri facias*, the proceedings as far as the ſheriff hath gone muſt ſtand: but ſee 2 *Roll. Abr.* 491.

1 Lil. 526. Where a writ of error is brought to reverſe a judgment of an inferior court, though the record is not certified as it ought, yet execution cannot be ſued; but on certificate of the neglect, *&c.* a writ of *executione judicii* may be iſſued.

Ibid. 518. And if a writ of error to reverſe a judgment be diſcontinued for want of proſecution; execution cannot be had upon the judgment until the diſcontinuance is certified from the court where diſcontinued.

Ibid. The want of a bill in *B. R.* is error upon a judgment by confeſſion, or default; but not after a verdict; becauſe the bill is the original proceſs there.

The

The jury, notwithstanding the plaintiff had laid his damage at only 40*l.* assessed 40*l.* for damages, and 20*s.* for costs.

The plaintiff afterwards entered a remittitur as to 9*l.* parcel of the damages, and moved judgment for 40*l.* the amount of the damages laid; and also 10*l.* for costs, 9*l.* for costs *de incrementis* having been added by the court. Judgment being given by the court of *King's Bench* for 40*l.* a writ of error was brought in the *Exchequer Chamber*; and the question was whether this judgment was erroneous, by reason that the sum for which it was given amounted to more than the damages laid in the declaration. It was upon great consideration held by all the judges of the *Common Bench*, and barons of the *Exchequer*, that the judgment of the court of *King's Bench* should be affirmed.

Bar. Reg. 1794.

A writ of error can be nonprossed until a rule to assign errors has been taken out and signed.

Certh. v. Bar. Reg. 1794.

Judgment against two in *C. B.* both defendants must join in the writ of error; if one dies, he must be summoned and severed: otherwise every defendant might use a separate writ of error, and thereby delay the plaintiff in his execution, although his judgment should be affirmed once or oftener.

Hob. 5. 4.

Lord *William Howard* having recovered a judgment in a *replevin* against *Salkeld*: the year before the execution was levied brought

2 Str. 486. 491. side, suggesting that the plaintiff could not regularly take out execution until such certificate from the clerk of the errors. Sed held, such certificate not essentially necessary before taking out execution, though frequently taken out of caution. The stat. 16 & 17 Car. II. is positive as to bail within four days. Bail ought to have been put in before the motion. Cur. discharged the rule to shew cause. A question arose, whether, after bail perfected, the goods can be released: held that if defendant's person be taken by a *ca. sa.* and bail in error afterwards perfected, the person shall be discharged; but in case of a *fieri facias*, the proceedings as far as the sheriff hath gone must stand: but see a *Mod. Abr.* 491.

1 Lil. 516. Where a writ of error is brought to reverse a judgment of an inferior court, though the record is not certified as it ought, yet execution cannot be sued; but on certificate of the neglect, &c. a writ of *executrix* may be issued.

Ibid. 518. And if a writ of error to reverse a judgment be discontinued for want of prosecution; execution cannot be had upon the judgment until the discontinuance is certified from the court where discontinued.

Ibid. The want of a bill in *B. R.* is error upon a judgment by confession, or default; but not after a verdict; because the bill is the original process there.

The jury, notwithstanding the plaintiff had laid his damage at only 40 *l.* assessed 49 *l.* for damages, and 20 *s.* for costs. 10 Rep. 115. Pilford's case.

The plaintiff afterwards entered a *remittitur* as to 9 *l.* parcel of the damages, and prayed judgment for 40 *l.* the amount of the damages laid; and also 10 *l.* for costs; 9 *l.* for costs *de incremento* having been added by the court. Judgment being given by the court of *King's Bench* for 50 *l.* a writ of error was brought in the *Exchequer Chamber*; and the question was whether this judgment was erroneous, by reason that the sum for which it was given amounted to more than the damages laid in the declaration. It was upon great consideration held by all the justices of the *Common Bench*, and barons of the *Exchequer*, that the judgment of the court of *King's Bench* should be affirmed.

No writ of error can be nonprossed until a rule to assign errors has been taken out and expired. Bur. Rep. 1772.

Judgment against two in *C. B.* both defendants must join in the writ of error; if one refuses, he must be summoned and severed: for otherwise every defendant might sue a separate writ of error, and thereby delay the plaintiff in his execution, although his judgment should be affirmed once or oftener. Carth. 7. Bur. Rep. 1791.

Lord *William Howard* having recovered judgment in a *cessavit* against *Salkeld:* the tenant before the execution was levied brought Hob. 218.

a

a writ of *deceit*; and becauſe that would not ſtop execution, he brought alſo a writ of error: and although both writs tended to avoid the judgment, yet becauſe they were grounded upon ſeveral reaſons and reſpects, they were both allowed.

The ſtatute of *Weſtminſter* 1, 29. 3 *Ed.* 1. Enacts, "That if any perſon do act or con-
"ſent to any thing in deceit of the court, or
"party, and thereof be attainted, he ſhall
"ſuffer a year and a day's impriſonment at
"the leaſt; and if a pleader he ſhall be ex-
"pelled the court; and if they deſerve greater
"puniſhment it ſhall be at the king's plea-
"ſure."

CHAP.

CHAP. XXV.

The doctrine of costs in error.

THE first statute which gives costs, or damages, to the demandant in a real action, was the statute of *Gloucester*, 6 *Edw.* I. c. 1. as did the statute of *Marlbridge* 52 *Hen.* III. c. 6. to the defendant in one particular case relative to warranty, though in reality costs were always considered and included in the *quantum* of damages, in such actions where damages are given; and even now costs for the plaintiff are always entered on the roll as a increase of damages by the court. But as those damages were frequently inadequate to the plaintiff's expences, the statute of *Gloucester* orders costs to be also added; and further directs that the same rule shall take place in all cases where the party is to recover damages. And therefore in those cases where no damages were then recoverable, (as in *quare impedit*, in which damages were not given till the statute of *Glocester* c. 1. 13 *Edw.* I.) no costs are now allowed; (10 *Rep.* 116.) unless they have been expressly given by some subsequent statute.

The statute 3 *Hen.* VII. c. 10. was the first which allowed any costs on a writ of error, but it has been doubted whether this statute extends to writs of error in the *Exchequer Chamber*, because the 27 *Eliz.* which gives

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CHAP. XXV.

The doctrine of costs in error.

THE first statute which gives costs, *eo nomine*, to the demandant in a real action, was the statute of *Gloucester*, 6 *Edw.* I. *c.* 1. as did the statute of *Marlbridge* 52 *Hen.* III. *c.* 6. to the defendant in one particular case relative to wardship; though in reality costs were always considered and included in the *quantum* of damages, in such actions where damages are given; and even now costs for the plaintiff are always entered on the roll as increase of damages by the court. But because those damages were frequently inadequate to the plaintiff's expences, the statute of *Gloucester* orders costs to be also added; and further directs that the same rule shall hold place in all cases where the party is to recover damages. And therefore in such actions where no damages were then recoverable, (as in *quare impedit*, in which damages were not given till the statute of *Westminster* 2. 13 *Edw.* I.) no costs are now allowed; (10 *Rep.* 116.) unless they have been expresly given by some subsequent statute.

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writs of error there; (recited in chapter the second), says nothing about *costs*. But no costs were allowed the defendant in any shape till the statutes 23 *Hen.* VIII. *c.* 15. 4 *Jac.* I. *c.* 3. 8 & 9 *W.* III. *c.* 11. 4 & 5 *Ann.* *c.* 16. which very equitably gave the defendant, if he prevailed, the same costs as the plaintiff would have had in case he had recovered.

By 8 & 9 *W.* III. *c.* 11. "If after judgment for the *defendant* in any action, the plaintiff or demandant shall sue any writ of error to annul the same, and such judgment shall be afterwards affirmed, or the writ of error be discontinued, or the plaintiff shall be nonsuited therein, the defendant or tenant shall have judgment to recover costs."

Str. 617. Wyvil v. Stapleton.

Judgment was given for the defendant in the original action; a writ of error was brought thereon by the plaintiff; the judgment being reversed, the question was, whether the plaintiff should have costs in error as well as costs in the action. It was held he should only have costs in the original action, and none in error. And *per Cur.* The 3 *Hen.* VII. and 8 & 9 *W.* III. do only extend to the case of an *affirmance:* and it is very reasonable they should not extend to the case of a *reversal:* for it would be hard that any person should pay the costs occasioned by an error in the judgment of the court below. This court can only now give such judgment as the court below ought to have given, to

to wit, judgment for the plaintiff in the original action. It follows therefore, that the plaintiff in error can never have the costs of suit upon a writ of error.

In one case the doctrine was, that in error on a judgment in *quare impedit*, upon the judgment being affirmed, the defendant in error should have *costs*, as well as damages, although no costs were recoverable in the original action.

Dyer 77. Case of the bishop of *Salisbury*.

It is laid down in a second, that costs and damages being given generally by 3 *H.* VII. for the delay of the execution, if error is brought on a judgment in *formedon*, and the judgment is affirmed, the defendant is intitled to costs, notwithstanding no costs or damages were in the original action recoverable.

Cro. Eliz. 617. Graves and Short.

Again it is said, that the defendant in error, upon a judgment in a suit of *quod permittat*, shall have costs in case of affirmance, notwithstanding no costs or damages were recoverable in the original action; for that costs are to be paid in every case in which a writ of error is brought before execution, and the judgment is affirmed.

Ibid. 649.

The same doctrine is given in two other cases wherein writs of error were brought upon judgments in *quare impedit*, and in the first of them the bishop of *Salisbury's* case is expresly recognized.

Cro. Car. 151, 175. Lord Pembroke *v.* Bostock.

But

But however, the contrary to what is here laid down has been held in divers subsequent cases.

Ibid. 425. Smith v. Smith.

Error in the *King's Bench* upon a judgment of the *Common Pleas* in *formedon*, and the judgment being affirmed, the question was, whether the defendant in error should have costs? it was held he should not; *per Cur.* As neither costs or damages were recoverable in the original suit, the delay of execution occasioned by this writ of error was only as to the land, and consequently the defendant is not intitled to costs under 3 *H.* VII. *c.* 10.

1 Lev. 146.

In a writ of error the judgment was affirmed; but it was holden upon the authority of *Smith* and *Smith*, *Cro. Car.* 425. that the defendant in error should not have costs; because neither costs or damages were, by the original action, recoverable.

1 Vent. 166.

A writ of error was brought by an *administrator*, before execution, upon a judgment in *ejectment* against the *intestate*, and the judgment was affirmed. It was held that he should not pay costs.

4 Mod. 245. Carth. 281. S. C.

Another writ of error was brought by an *administrator*, upon a judgment against himself as administrator, and the judgment affirmed. It was held he should not pay costs by reason he was not liable to any in the original action. v. chap. 2.

No

No costs can be, after execution *executed*, because no delay; for 3 *H.* VII. only gives costs to a defendant in error, where execution has been delayed by the writ of error.

And in a very modern case in which an *executor* brought a writ of error upon a judgment against the testator, which was affirmed, it was held he was not liable to costs. Str. 1072.

But in one posterior to the latest of the foregoing, the law of the old cases is recognized.

Error in the *King's Bench* on a judgment of the *Common Pleas*, in *usury*, which being affirmed, a question arose, whether, as the defendant in error, could not have recovered costs in the original action, he was intitled to any in error;—when it was determined he was intitled to costs by the express words of the 3 *H.* VII. this writ of error being in delay of execution. Str. 1084.

And it was remarked by the court, that the right of the defendant in error, in this case, to costs, is much clearer since the 8 & 9 *W.* III. because the party who is now plaintiff in error, would, under this statute, have been intitled to costs in case there had been judgment for him in the original action, and such judgment afterwards affirmed in error.

This statute enacts, "That if any person "or persons shall prosecute any writ of error 13 Car. II. c. 2. par. 10.

"for the reversal of any judgment given "*after a verdict*, in any court of record at "*Westminster*, or in the Counties palatine of "*Chester*, *Lancaster*, or *Durham*, or in any "court of great sessions in *Wales*, and the "said judgment shall be affirmed, then every "such person shall pay to the defendant or "defendants in the writ of error, his or their "double costs."

4 Ann. c. 16. For preventing vexation by suing out defective writs of error, it is ordained, That upon the quashing of any writ of error for variance from the record or other defect, the defendant shall recover his costs as he should have done if the judgment had been affirmed.

March 863. A judgment, whereon a writ of error is brought, may be amended without costs, the 4 *Ann. c.* 16. *par.* 25. not giving costs on amending, as it doth on quashing.

Cro. Jac. 364. Cro. Eliz. 416, 892. Although the year and day are past, and no process of execution issued, yet, the writ of error having renewed the record, the plaintiff shall have execution without a *scire facias*.

CHAP.

CHAP. XXVI.

Containing the fees and disbursements.

In error from the Common Pleas *to the* King's Bench.

For the plaintiff in error.

Easter term, 1779.

	l.	*s.*	*d.*
DRawing precipe for writ of error and copy for cursitor	0	2	0
Writ of error and fee	1	3	4
Paid for allowance	2	2	6
Attendance	0	3	4
Copy and service of the allowance	0	2	0

Trinity Term.

Paid for the transcript	4	0	0
Attending to examine it	0	3	4
Paid for delivering out same	0	2	0
Copy thereof 4 *d.* per sheet			
Term fee in error.	0	6	8
Letters	0	2	0

Michaelmas term.

Searching if rule on *sci. fa.* given	0	3	4
Searching with *custos brevium* if any original writ filed and paid	0	3	9
Fee to Mr. *Baldwin* to advise on the transcript	1	1	0

	l.	s.	d.
Attending him	0	3	4
Searching with the cursitor if any original writ sued out	0	3	4
Drawing assignment of errors fo. 6.	0	6	0
Fee to counsel to sign same	0	10	6
Attending him	0	3	4
Copy on stamps delivered	0	2	3
Rule to rejoin	0	2	0
Copy and service	0	2	0
Searching if rule to return *certiorari* given	0	3	4
Drawing *certiorari*	0	3	0
Ingrossing, signing, and sealing	0	5	6
Stamps and parchment	0	10	8
Fee thereon	0	3	4
Paid *custos brevium* for return	3	0	0
To his clerk	0	2	6
Attendance	0	3	4
Filing the same and notice	0	2	8
Copy joinder in error fo. 30.	0	10	0
Drawing verification of error, fo. 3.	0	3	0
Fee to counsel to peruse and sign	0	10	6
Attendance	0	3	4
Copy on stamps delivered	0	0	9
Paid for copy of defendants rejoinder	0	5	0
Completing the paper book	0	3	4
Entry on roll, fo. 60	1	0	0
Paid master *	0	18	0
Two copies for judges	2	0	0
To their clerks	0	4	0
Attending to deliver books	0	3	4
Copy paper-book for counsel	1	0	0
Fee to him	1	1	0

* Not done by the plaintiff in error, except it is in his power to obtain a reversal of the judgment.

Attend-

Attend up him
Searching with the crier if any
original sue fued out
Drawing affidavit of errors fo. 6
Fee to counsel to sign same
Attending him
Copy of flumps delivered
Work to paper
Copy and service
Searching if rule to return *rationem*
given
Drawing *rationem*
Engrossing, filing, and leaving
Stamps for parchment
Fee thereon
Rule nisi *rationem* for return
To his clerk
Attendance
Filing the same and make
Copy judgment entered fo. 50
Drawing affidavit of error fo. 5
Fee to counsel to perus and sign
Attendance
Copy ex parte *del* paper
Fee for copy of defendant's *rationem*
Comparing per paper book
Entry on roll fo. 60
Paid paper
Two copies for judges
To town clerks
Attending to deliver books
Copy paper-book for counsel
Fee to him

* Not done by the plaintiff in error, except it be to obtain a reversal of the judgment.

Attend

	l.	s.	d.
Attending to instruct him	0	3	4
Attending court on the argument (*each day in the paper*)	0	6	8
Term fee	0	6	8
Letters	0	2	0

If the Writ of error is bailable, add the following fees, directly after the allowance.

Attending clerk of errors with the bail and on same being acknowledged	0	3	4
Paid fees thereon	1	4	0
Notice of bail put in, copy, and service	0	2	0
A rule being served for better bail notice of justification, copy, and service	0	2	0
Affidavit of service	0	5	7
Instructions for counsel to move to justify bail	0	2	6
Fee to serjeant *Walker*	0	10	6
Attending court when bail allowed	0	3	4
Paid court fees	0	15	0
Paid for rule	0	5	0
Copy and service	0	2	9

CHAP. XXVII.

Costs for the defendant in error.

From the Common Pleas *to the* King's Bench.

Easter vacation, 1779.

	l.	*s.*	*d.*
SEarching if writ of error allowed, and when returnable	0	3	4
Drawing precipe for original fo. 20	1	0	0
Copy for cursitor (8 *d.* per fo. *allowed*)	0	13	4
Paid for original	0	13	0
Fee thereon	0	6	8
Paid king's fine			
Returning and filing	0	6	0
Attendance on the occasion	0	3	4
Making inquiries after the bail	0	6	0
Entring exception thereto	0	2	0
Rule for better bail	0	4	0
Copy and service	0	2	0
Drawing and ingrossing affidavit to oppose justification, fo. 9. stamps and oath	0	9	1
Instructions for counsel	0	2	6
Fee to serjeant Grose	0	10	6
Copy notice of justification annexed	0	1	0
Attending court when bail allowed	0	3	4

Trinity term.

Rule to transcribe	0	4	
Copy and service	0	2	

Search

	l.	s.	d.
Searching if plaintiff had transcribed	0	3	4
Paid clerk of errors examining transcript	0	2	6
Attendance	0	3	4
Paid Mr. *Heberden* for copy paper book fo. 27	0	9	0
Drawing *sci. fa. quare executionem non* fo. 6.	0	4	0
Ingrosing ditto stamps and parchment	0	4	4
Signing and sealing	0	2	3
Warrant thereon and messenger	0	3	4
Paid officer	0	5	0

If an alias scire facias *be issued, the same fees are to be added as are charged on the first.*

Term fee	0	6	8
Letters	0	2	0

Michaelmas term.

Rule on *sci. fa.*	0	2	6
Copy assignment of errors	0	2	0
Rule to return *certiorari*	0	2	6
Copy and service	0	2	0
Searching if *certiorari* returned	0	3	4
Paid for copy *certiorari* and return	1	1	0
Drawing joinder in error, fo. 30.	1	10	0
Fee to Mr. *Baldwin* to settle and sign	0	10	6
Attending him	0	3	4
Copy on stamps delivered	0	10	9
Fees to plaintiff's attorney therewith	0	2	6
Instructions for counsel to move for *consilium*	0	2	6

	l.	s.	d.
Fee to him	0	10	6
Attending court	0	3	4
Paid for rule	0	4	0
Copy and ſervice	0	2	0
Entring proceedings on roll, fo. 60	1	0	0
Paid maſter	0	18	0
Completing the paper book	0	3	4
Making two copies for judges	2	0	0
To their clerks	0	4	0
Attendance	0	3	4
Copy paper book for counſel	1	0	0
Fee to Mr. *Baldwin* therewith	1	1	0
Attending him	0	3	4
Paid ſetting down errors for argument	0	1	0
Attendance	0	3	4
Bagbearer taking roll to *Weſtminſter*	0	0	6
Paid marking ditto *read*	0	1	0
Attending court on the argument (*each day in the paper*)	0	6	8
Drawing bill of coſts	0	4	0
Attend maſter taxing coſts	0	3	4
Paid	0	2	6
Drawing and entring affirmance	0	10	0
Paid clerk of treaſury	0	3	4
Special *Fieri facias*, &c.	0	10	0
Term fee	0	6	8
Letters	0	2	0

CHAP.

CHAP. XXVIII.

Costs for the defendant in error.

From the King's Bench *to the* Exchequer-Chamber.

Trinity term, 1779.

	l.	*s.*	*d.*
ATTENDING to search if error brought and when returnable	0	3	4

Michaelmas term, 1779.

Rule to certify record	0	2	0
Copy and service	0	2	0
Searching several times if plaintiff had transcribed and to expedite the transcript	0	3	4
Paid taking transcript out of the office	0	2	6
Attending in the Treasury, *Westminster* to examine transcript	0	6	8
If in vacation, or after court time, Paid clerk of errors examining transcrpt, and for the keys of the treasury	0	7	10
Searching if writ of error and transcript were delivered over	0	3	4
Paid clerk of errors in *Exchequer Chamber* for copy transcript and writ of error	2	0	0
Attend thereon	0	3	4
Fair copy fo. 60	1	0	0

Attend-

	l.	s.	d.
Attending and examining same with record	0	6	8
Term fee in error	0	6	8
Letters and messengers	0	2	0

Hilary term, 1780.

Rule for plaintiff to alledge diminution,	0	2	4
Copy and service	0	2	0
Searching several times to see if diminution alledged	0	3	4
Term fee in error	0	6	8
Letters and messengers	0	2	0

Easter term.

Rule for plaintiff to assign errors	0	2	0
Copy and service	0	2	0
Term fee	0	6	8
Letters, &c.	0	2	0

Trinity term,

Searching if errors assigned	0	3	4
Copy assignment of errors	0	2	0
Drawing plea in *nullo est erratum*	0	4	0
Copy filed and duty	0	5	0
Paid setting down cause	0	10	0
Making copy paper book, fo. 70	1	3	4

The following fees if a special argument.

Four copies of paper book for the barons	4	13	4
To their clerks	0	8	0

	l.	s.	d.
Attending to deliver same	0	6	8
Copy paper book for counsel	1	3	4
Fee to him	2	2	0
Attending him	0	3	4
Attending court on the argument each day	0	6	8
Bill of costs and copy	0	4	0
Notice of taxing	0	3	0
Attending taxing costs, and to examine *remittitur*	0	6	8
Paid for affirming the judgment	4	0	0
Drawing the entry thereof and of *remittitur*	0	6	0
Entring on roll	0	3	0
Attendance in the Treasury to enter and examine same	0	6	8
Paid clerk	0	3	6
Term fee	0	6	8
Letters	0	2	0

CHAP.

CHAP. XXIX.

The plaintiff in error's costs.

In the Exchequer Chamber.

Trinity Term.

	l.	*s.*	*d.*
DRawing precipe for writ of error and copy	0	2	0
Paid cursitor for same and fee	1	0	0
Paid clerk of errors for allowing it	2	0	0
Attending on the occasion	0	3	4
Copy and service	0	2	0

Michaelmas term.

Being served with rule to transcribe, paid for transcript	3	0	0
Paid taking same out of the office	0	2	6
Paid clerk of errors in *Exchequer Chamber* for copy, writ and transcript	2	0	0
Attending thereon	0	3	4
Fair copy, fo. 60	1	0	0
Attending to examine same with record	0	6	8
Fee to serjeant *Grose* to advise on the transcript	1	1	0
Attending him	0	3	4
Searching if any bill, bail, &c. filed	0	3	4
Term fee	0	6	8
Letters	0	2	0

Hilary

Hilary term.

	l.	s.	d.
Rule to alledge diminution served; drawing and ingrossing writ of diminution, 8 *d.* per folio.			
Stamps and parchment, sealing, *&c.*	0	5	0
Paid returning it and fee	1	0	0
Paid alledging diminution *	0	8	0
Term fee	0	6	8
Letters	0	2	0

Easter term.

Paid for assignment of errors	0	8	0
Term fee	0	6	8
Letters	0	2	0

Trinity term.

Copy plea in *nullo est erratum*	0	2	0
Making copy paper book for counsel, fo. 70	1	3	4

If a special argument, or in case of bail being put in on the writ of error, proper fees for the same, as also for the remainder of these costs, are inserted in the three last Chapters.

* See Page 98.

CHAP.

CHAP XXX.

The costs of the plaintiff in error.

In Parliament.

Trinity term.

	l.	*s.*	*d.*
DRawing precipe for writ of error and copy	0	2	0
Paid for writ of error and fee	6	9	8
Paid for allowance	4	0	0
Attendance	0	6	8
Copy and service	0	2	0

Michaelmas term.

Paid for transcript	5	0	0
Attending to examine same	0	6	8
Paid for delivering same out of the office	0	2	6
Copy thereof 4*d.* per folio			
Attending to examine with record	0	6	8
Paid clerk of errors	0	3	4
Fee to counsel to advise on transcript	1	1	0
Attending him	0	3	4
Term fee	0	6	8
Letters	0	2	0

Hilary term, 1780.

Drawing assignment of errors, fo. 9.	0	9	0
Fee to counsel to sign	0	10	6

At

	l.	s.	d.
Attending him	0	3	4
Copy on ſtamps delivered	0	3	3
Writ of diminution and fee	1	0	0
Paid returning	1	0	0
Copy return for counſel	0	5	0
Certiorari and fee	0	15	0
Copy joinder in error	0	5	0
Attend the houſe on motion for a day to hear errors	0	6	8
Two copies of paper book for counſel 4 *d.* per folio			
Fee to Mr. *Hardinge*	2	2	0
The ſame to Mr. *Lee*	2	2	0
Their clerks	0	5	0
Attending them	0	6	8
Attending the Houſe of Peers each day	0	6	8
Paid fees on reverſal	1	0	0
Drawing and entring reverſal of the judgment	0	10	0
Paid clerk of Treaſury,	0	3	4
Term fee	0	6	8
Letters	0	2	0

If printed caſes are delivered to the Lords, they muſt be charged for according to the length: and if bail be put in on the writ of error, or any other *extra* matter done; the proper fees for the ſame may be acquired from the foregoing chapters of Fees and Diſburſements.

CHAP.

CHAP. The last.

Containing authentick precedents of special writs of execution and scire facias, *after affirmance, non-pros, and reversal of judgments.*

Affirmance *by the* King's Bench *of a judgment of the* Common Pleas.

(Fi. fa.)

GEORGE, the third, (*&c.*) To the sheriff of *M.* greeting. We command you, that you cause to be made, and levied, of the goods, and chattels, in your bailiwick, of *John Gregory*, late of *Westminster*, in your county, yeoman, 28 *l.* 10 *s.* which *Ann Hook*, lately in our court, before Sir *William de Grey*, knight, and his bretheren, (*then*) our justices of the bench at *Westminster*, recovered against the said *John*,

(Ca. sa.)

GEORGE (*&c.*) To the sheriff of *M.* greeting. We command you, that you take *John Gregory*, late of *Westminster*, in your county, yeoman, if he shall be found in your baliwick, and him safely keep, so that you may have his body before us *in eight days of St. Hilary*, wheresoever we shall then be in *England*, to make satisfaction to *Ann Hook*, for 28 *l.* 10 *s.* which the said *Ann*, lately in our court, before Sir *William de Grey*, knight, and his companions, then our justices of the bench, at *Westminster*, recovered against the said *John*

for

for her damages, which ſhe ſuſtained, as well by reaſon of the ſaid *John*'s not having performed certain promiſes and undertakings made by him to the ſaid *Ann*, as for her coſts and charges, which ſhe had been put unto, about her ſuit in that behalf; whereof the ſaid *John* was convicted. As by the record, and proceedings thereof, which we lately cauſed to come into our court before us, for certain cauſes of error, and now there remaining, it appears to us of record: *And alſo fourteen pounds* adjudged to the ſaid *Ann*, in our ſaid court before us, according to the form of the ſtatute in ſuch caſe made and provided, for her damages, coſts, and charges, which ſhe hath ſuſtained and expended, by occaſion of the delay of the execution of the judgment aforeſaid, by the proſecution of our ſaid writ of error; *the ſaid judgment being, in our ſaid court before us, in all things affirmed*: whereof the ſaid *John* is alſo convicted; as appears to us likewiſe of record.

And have you the ſaid monies before us, in *eight days of St.* Hilary, wherefoever we ſhall then be in *England*, to render to the ſaid *Ann*, for her damages, coſts, and charges, aforeſaid; and alſo this writ. Witneſs, *&c.*

And have you there this writ. Witneſs, *William* earl of *Mansfield*, at *Weſtminſter*, the 28th day of *November*, in the 20th year of our reign.

Stormont and *Way*.

Until the transcript comes into the *King's Bench*, the cause is not removed: (and so from thence into the *Exchequer:*) if therefore *non-pros* is signed for not *transcribing*, there must be nothing but a common execution issued from the court in which the judgment was obtained, just the same as if nowrit of error had been brought at all. (*See page* 31.)

Non pros, *after scire facias quare non executionem non.*

(*Fi. Fa.*)

George, &c. To the sheriff of *M.* greeting. We command you, that you cause to be made, and levied, of the goods, and chattels, in your bailiwick, of *John Gregory*, [late of *Westminster* [in your county, yeoman,] 35*l.* 10*s.*

(*Ca. Sa.*)

George, &c. To the sheriff of *M.* greeting. We command you, that you take *John Gregory*, late of *Westminster* in your county, yeoman, if he shall be found in your bailiwick, and safely keep him, so that you may have his body before us, *in eight days of St. Hilary*, wheresoever we shall then be in *England*, to make satisfaction to *Ann Hook*, for 35*l.* 10*s.*

Which were awarded to ~~the said~~ *Ann Hook*, in our court before us, according to the form of the statute, in such case made and provided, for her damages, costs, and charges, which she

she sustained, by occasion of the delay of execution of a certain judgment obtained by the said *Ann* against the said *John*, for 28 *l.* 10 *s.* in our court, before Sir *William de Grey*, knight, and his companions, our justices of the *Bench*, at *Westminster*; as by the record and proceedings thereof, which, for certain causes of error, we lately caused to be brought into our said court before us, and now there remaining, appears to us of record. And for that the said *John*, afterwards in our court before us, did not prosecute his said writ of error,* as also appears to us of record.

And have you the said money before us, in eight days of Saint *Hilary*, wheresoever we shall then be in *England*, to render to the said *Ann*, for her damages, costs, and charges aforesaid: and this writ, *Witness*, *&c.*

And have you there this writ, *Witness*, *&c.*

For Restitution on the REVERSAL by the King's Bench, *of a judgment given in the* Common Pleas.

GEORGE, *&c.* To the sheriff of *M.* greeting. Whereas *Ann Sims* lately, that is to say, in *Trinity term*, in the 19th year of our reign, in our court, before Sir *William de Grey*, knight, and his companions, (then) our jus-

* Or, *the said writ of eror was duly nonprossed.*

tices of the *Bench*, at *Westminster*, by our writ, and by the consideration of the said court, recovered against *John Owen*, late of *Westminster* in your county, yeoman, 100 *l.* which in our said court of the *Bench*, were awarded to the said *Ann*, as well on account of the said *John* not having performed certain promises, and undertakings, by the said *John* made to the said *Ann*; as for her costs and charges, which she had been put unto, about her suit in that behalf; whereof he is convicted, as by the record and proceedings thereof, which we lately caused to be brought into our court before us, for certain causes of error, appears to us of record. *And whereas* we, by reason of diverse errors in the said record and proceedings, and also in giving the said judgment, have *reversed and totally annulled the same:* It is therefore considered, and adjudged, in our said court, before us, that the said *John* be restored to all things which he hath lost by occasion of the said judgment. And for that the said *Ann* sued out execution upon the said judgment, and he the said *John* was thereupon taken in execution for the same, and detained in prison, until payment was made to the said *Ann* of the said 100 *l.* *Therefore* we command you,

(Fi. Fa.)	*(Ca. Sa.)*
That of the goods, and chattels, of the said *Ann* in your bailiwick, you cause to be made and levied, the	That you take the said *Ann*, if she shall be found in your bailiwick, so that you may have her body before us,

ſaid 100 *l.* and have you that money before us, *on the morrow of the Holy Trinity*, wheresoever we ſhall then be in *England*, to reſtore to the ſaid *John*, the ſaid money ſo awarded to him, by our ſaid court before us, upon the *reverſal* of the ſaid judgment: and have there this writ. Witneſs, *&c.*

us, *on the morrow of the Holy Trinity*, wheresoever we ſhall then be in *England*, to make ſatisfaction to the ſaid *John Owen* for the ſaid 100 *l.* ſo awarded to him, by our ſaid court before us, upon the *reverſal* of the ſaid judgment: and have there this writ. Witneſs *William* Earl of *Mansfield*, at *Weſtminſter*, the 8th day of *May*, in the 20th year of our reign.

Stormont and *Way*.

☞ The ſame forms of *Teſtatum*'s and *non-mittas*'s, which are uſed in common executions may be added to any of theſe, as occaſion requires.

Affirmance *by the* King's Bench, *of a judgment on recognizance of bail in the* Common Pleas.

(Fi. Fa.)

George, &c. To the ſheriff of *M.* greeting. We command you, that you cauſe to be made and levied, of

(Ca. Sa.)

George, &c. To the ſheriff of *M.* greeting, we command you, that you take *John Friendly*, late of, *&c.* gentle-

the * goods and chattels of *John Friendly*, late of *Duke Street*, in the parish of Saint *Margaret*, *Westminster*, in your county, gentleman, and of the goods and chattels, of *Richard Goodwill*, late of *Parliament Street*, in the same parish, and county, gentleman, being in your bailiwick, 50 *l.* to be rendered to *Ann Hook*.

man, and *Richard Goodwill*, late of, *&c.* gentleman, if they shall be found in your bailiwick, and them safely keep, so that you may have their bodies before us, in fifteen days of Saint *Hilary*, wheresoever we shall then be in *England*, to make satisfaction to *Ann Hook*, for 50 *l.* to be rendered to the said *Ann*.

According to the form and effect of the award of an execution upon a certain recognize of bail, by the said *John* and *Richard* acknowledged to the said *Ann* in our court, before Sir *William de Grey*, knight, and his companions, (then) our justices of the common *Bench*, at *Westminster*; as by the record and proceedings of the award of the execution thereof, which we lately caused to come into our court before us, for certain causes of error, appears to us of record. And also 12 *l.* adjudged to the said *Ann* in our said court before us, according to the form of the statute in such case made and provided, for her damages, costs, and charges, which she hath been put unto, by occasion of the delay of the

* Lil. Ent. 582. it is Lands.

execution

execution of the judgment aforesaid, by means of the prosecution of our said writ of error; the said judgment being in our said court before us, in all things affirmed. Whereof the said *John* and *Richard*, are also convicted: as appears to us likewise of record.

And have you the said monies before us, at *Westminster*, in fifteen days of Saint *Hilary*, wheresoever we shall then be in *England*, to render to the said *Ann*, for her damages, costs, and charges aforesaid; and also this writ. Witness, *&c.*

And have you there this writ. Witness, *&c.*

Affirmance by the Exchequer chamber, of a judgment of the King's Bench.

(*Fi Fa.*)

George, &c. To the sheriff of *M.* greeting. We command you, that of the goods, and chattels of *John Henry*, in your bailiwick, you cause to be made and levied, 40 *l.* which *Humphry Hale* lately in our court, before us,

(*Ca. Sa.*)

George, &c. To the sheriff of *M.* greeting. We command you, that you take *John Henry*, if he shall be found in your bailiwick, and him safely keep, so that you may have his body before us, at *Westminster*, on

at *Westminster* recovered against the said *John*.

Monday next after eight days of Saint Hilary, to make satisfaction to *Humphry Hale*, for 40*l*.

For his damages which he hath sustained, as well on account of the said *John's* not having performed certain promises, and undertakings, lately made by him to the said *Humphry*, as for his costs, and charges, which he hath been put unto, about his suit in this behalf; whereof the said *John* is convicted, as appears to us of record: and also 18*l*. adjudged to the said *Humphry*, in our court of Exchequer chamber, *before our Justices of the common Bench, and our barons of our Exchequer, of the degree of the coif*, according to the form of the Statute in such case made and provided, for his damages, costs, and charges, which he hath sustained, and expended, by reason of the delay of the execution of the judgment aforesaid, by means of the prosecution of our writ for correcting error, brought thereupon by the said *John* against the said *Humphry*, in the said *Exchequer chamber*, the said judgment being there, in all things affirmed; of which the said *John* is also convicted. As by the record and proceedings of our said *justices and barons*, before them had in the premisses, and by them remitted into, and now remaining in our said court before us, at *Westminster*, also appears to us of record.

And

And have you the ſaid monies before us, at *Weſtminſter*, on *Monday next after eight days of Saint* Hilary, to render to the ſaid *Humphry*, for his damages, coſts, and charges aforeſaid. And alſo this writ. Witneſs, *&c.*

S. & W.

And have then there this writ. Witneſs, *&c.*

Stormont and *Way.*

A fieri facias *in debt on bond for an adminiſtratrix, upon a judgment of the court of* Common Pleas *affirmed in the* King's Bench, *in the life-time of the inteſtate, after a* ſcire facias.

GEORGE, *&c.* to the ſheriff of *M.* greeting. We command you, that of the goods and chattels in your bailiwick, of *Anthony Slack*, late of *Weſtminſter*, in your county, gentleman, you cauſe to be levied, 500 *l.* for a debt, which *George Free*, now deceaſed, in his life-time, lately in our court, before Sir *William de Grey*, knight, and his companions, our juſtices of the *Bench* at *Weſtminſter*, by our writ, and by the conſideration of the ſame court, recovered againſt him; and alſo 20*l.* awarded, by the ſame court, to the ſaid *George*, in his life-time, with his aſſent, for his damages which he hath ſuſtained, by occaſion of the detention of the ſaid debt, whereof the ſaid *Anthony* is convicted,

ed. As by the record and proceedings thereof, which, for certain cases of error, we lately caused to be brought into our court before us, and now there remaining, in all things affirmed, appears to us of record: and also 18 *l.* which in our said court before us, were awarded to the said *George* in his life-time, according to the form of the statute, in that case made and provided, for his damages, costs, and charges, which he sustained, by reason of the delay of execution of the judgment aforesaid, by means of the prosecution of the said writ of error; as also appears to us of record*. *And whereas* the said *George Free* afterwards (to wit) on the 1st day of *November*, in the 21st year of our reign, died intestate, not having received any satisfaction for his debt, damages, costs and charges aforesaid, or any part thereof. After whose death, (to wit) on the 16th day of *November*, in the 21st year aforesaid, administration of all and singular the goods and chattels, rights, and credits, which were of the said *George*, at the time of his death, were, by *Frederick*, by divine providence, archbishop of *Canterbury*, primate of all *England*, and metropolitan, (to whom the commission of the administration aforesaid did belong, in this behalf;)

Recites the death.

Administration.

* Or thus — And thereupon it was considered in our said court before us, that *Elizabeth Free* the widow relict, and administratrix of all and singular the goods and chattels, rights and credits, which were belonging to the said *George Free* at the time of his death, may have execution against the said *Anthony*, for the debt, damages, costs, and cha ges aforesaid. And have you that money before us, *&c.*

was

was granted, and committed, in due form of law, to *Elizabeth Free*, the widow, and relict of the said deceased. And for that in our said court before us, it is considered, that the said *Elizabeth* have execution against the said *Anthony*, for the debt, damages, costs and charges aforesaid, as also of 4*l.* for her damages, costs and charges by our court before us, awarded to the said *Elizabeth*, according to the form of the statute in such case made and provided: whereof the said *Anthony* is convicted; as appears to us likewise of record. And have you that money before us, *on the octave of Saint* Hilary, wheresoever we shall then be in *England*, to render to the said *Elizabeth*, for the debt, and the several damages, costs, and charges aforesaid: And this writ. Witness, *&c.*

And sci. fa.

8 & 9 W. III. c. 10. s. 3.

Scire facias ad audiendum errores, on error to reverse outlawry in the King's Bench.

GEORGE the third, *&c.* To the sheriff's of *London* greeting. Whereas *Ann Sim's*, lately in our court, before us, impleaded *John Owen* late of *London*, yeoman, in a plea, *That whereas, (transcribe the original writ)* to the damage of the said *Ann* of 100*l.* as it is said. And the said *John* because he did not come before us, to answer to the said *Ann* in the same plea, was put in exigent, and in the hustings of the *Guildhall* of the city of *London*, on that occasion, was afterwards, outlawed; as by the the record and proceedings thereof, in our said court before us remaining, manifestly appears: and

and becauſe, on the part of the ſaid *John*, as we are informed, a manifeſt error hath happened in the record and proceedings aforeſaid, and alſo in the pronouncing of the outlawry aforeſaid, thereupon the ſame *John* hath proſecuted our writ of error, directed to our juſtices aſſigned to hold pleas in our court before us, commanding them, that inſpecting the record and proceedings aforeſaid, they farther cauſe to be done therein, for the annulling of the outlawry aforeſaid, what of right, and according to the law and cuſtom of this kingdom of *England*, ſhall be neceſſary to be done in the premiſſes. And the ſaid *John* hath thereupon duly aſſigned his errors, on record; as by the inſpection thereof likewiſe appears to us: Therefore we command you, that by good and lawful men of your bailiwick, you give notice to the ſaid *Ann Sims*, that ſhe be before us, *on the morrow of All Souls*, wherefoever we ſhall then be in *England*, to hear the record and proceedings aforeſaid, and alſo the errors, in the pronouncing of the outlawry aforeſaid, aſſigned, if ſhe ſhall think fit. And farther to do and receive what our ſaid court, before us, ſhall then and there conſider of her, in this behalf. And have there the names of thoſe by whom you ſhall give her notice, together with this writ. Witneſs *William* Earl of *Mansfield*, at *Weſtminſter*, the 23d day of *June*, in the 19th year of our reign.

Stormont and *Way*.

Scire

Scire facias *against bail in error on a judgment of the* King's Bench.

GEORGE the third, by the grace of God, of *Great Britain*, *France*, and *Ireland*, king, defender of the faith, *&c.* To the sheriff of *Middlesex*, greeting: Whereas *John Spencer* of *King-street*, in the parish of St. *Margaret*, *Westminster*, in the county of *Middlesex*, gentleman, and *William Spry*, of *Bridge-street*, in the same parish and county, gentleman, on the third day of *May*, in the nineteenth year of our reign, before Sir *William Henry Ashhurst*, knight, one of our justices assigned to hold pleas in our court before us, at his chambers in *Serjeant's Inn*, *Chancery-lane*, *London*; came in their proper persons, and according to the form of the statute in such case made and provided, acknowledged themselves, and each of them separately, did acknowledge himself, to owe to *Job Samson*, the sum of 200 *l.* of lawful money of *Great Britain*, to be paid to the said *Job*, his executors, or assigns; and unless they should so do, the said *John* and *William* did grant and agree, and each of them for himself did grant and agree, that the said 200 *l.* of their, and each of their, lands and chattels, should be made and levied to the use of the said *Job*, upon the condition following, to wit: *That whereas* the aforesaid *Job*, lately, in our court before us, at *Westminster* by bill, without our writ, and by the judgment of the same court, recovered

covered against *Walter Raleigh*, 100*l.* for his damages, which he had sustained, as well by means of the not performing certain promises, and undertakings, then lately made by the said *Walter*, to the said *Job*, as for his costs, and charges, by him, about his Suit, in that behalf expended, whereof the said *Walter* had been convicted; as appeared of record in our said court before us, at *Westminster*: *And whereas*, the said *Walter* brought a writ of error upon the judgment aforesaid, returnable before our justices of the common *Bench*, and barons of our Exchequer, of the degree of the *coif*, in our Exchequer chamber, at *Westminster*, on *Wednesday* the 12th day of *May*, in the said 19th year of our reign: *If therefore* the said *Walter* should prosecute the said writ of error with effect, and also should satisfy and pay to the said *Job*, if the said judgment should be affirmed, or the said writ of error be discontinued, in his default, or he should be nonsuit therein, as well the damages, costs, and charges aforesaid, adjudged upon the said judgment, as also all such costs, charges, and damages, as should be awarded to the said *Job*, for delaying of execution of the judgment aforesaid, for prosecuting the said writ of error; then the said recognizance should be void, or else to be and remain in full force and virtue. Which said recognizance, the said justice afterwards, (to wit) on the said 3d day of *May*, in the 19th year aforesaid, brought into our said court before us, to be inrolled, and the same was then and there inrolled, in our said court before us, as of the said *Easter* term, in the 19th year afore-

aforesaid. As by the record thereof now remaining in our said court before us, manifestly appears. *And whereas* such were the proceedings, in the said cause, upon the writ of error aforesaid, in our said court of Exchequer chamber aforesaid, at *Westminster* aforesaid, before our said then justices of the *Bench* aforesaid, and the barons of our court of Exchequer aforesaid, of the degree of the *coif*, that afterwards, (to wit,) on the 6th day of *November*, in *Michaelmas* term, in the 20th year of our reign*, the said writ of error was duly nonprossed, and 12 *l.* were then and there adjudged, in and by the said court of our Exchequer chamber, at *Westminster*, to the said *Job*, for his costs and damages, on occasion of the delay of execution of the aforesaid judgment, on pretence of the prosecution of our said writ of error. As by the record thereof, remitted into our court before us, at *Westminster* aforesaid, from our said court of our Exchequer chamber, and now there remaining, manifestly appears. *Nevertheless* the said *Walter* hath not paid the said damages, costs, and charges, adjudged to the said *Job*, on the said judgment, or any part thereof; or the said 12 *l.* so adjudged to the said *Job*, for his costs and damages aforesaid, or any part thereof; as we have received information in our said court before us, from the said *Job*; wherefore the said *Job* hath intreated us to provide him a proper remedy in this behalf; and we being wil-

* Or. the judgment aforesaid, was in all things affirmed.

ling

ling that what is just should bedone on this occasion, command you, that by good and lawful men of your bailiwick, you make it known to the said *John* and *William*, that they be before us, at *Westminster*, on *Monday* next after eight days of Saint *Hilary*, to shew if they have, or know of, any thing to say for themselves, why the said *Job* ought not to have his execution against them, and each of them, for the said 200 *l.* by them jointly, and severally, acknowledged, in form aforesaid, according to the force, form and effect of the said recognizance, if it shall seem expedient to them so to do. And further to do and receive what our court before us, shall then and there consider of them in this behalf; and have you there then the names of those by whom you shall make it known to them, and this writ. Witness *William* Earl of *Mansfield*, at *Westminster*, the 29th day of *November*, in the 20th year of our reign.

Stormont and *Way*.

Scire facias against the executors of bail in error in the Exchequer chamber.

GEORGE the third, *&c.* To the sheriff of *Middlesex*, greeting. Whereas *John Spencer* of *King street*, in the parish of Saint *Margaret*, *Westminster*, in the county of *Middlesex*, gentleman, on the 3d day of *May*, in the 19th year of our reign, before Sir *William Henry Ashhurst*, knight, one of our justices assigned to hold pleas in our court before us, at his

his chambers in *Serjeant's Inn, Chancery-lane, London*, came in his proper person, and according to the form of the statute in such case made and provided, acknowledged himself to owe to *Job Samson*, the sum of 200 *l.* of lawful money of *Great Britain*, to be paid to the said *Job*, his executors, or assigns; and unless he should so do, the said *John* did grant and agree, that the said 200 *l.* of his lands, and chattels, should be made and levied, to the use of the said *Job*, upon the condition following, (to wit;) *That whereas* the aforesaid *Job*, lately in our court before us, at *Westminster*, by bill, without our writ, and by the judgment of the same court, recovered against *Walter Raleigh*, 100 *l.* for his damages which he had sustained, as well by means of the not performing certain promises and undertakings, then lately made by the said *Walter*, to the said *Job*, as for his costs, and charges, by him about his suit in that behalf expended, whereof the said *Walter* had been convicted; as appeared of record in our said court before us, at *Westminster*. *And whereas* the said *Walter* brought a writ of error, upon the judgment aforesaid, returnable before our justices of the common *Bench*, and barons of our Exchequer, of the degree of the *coif*, in our Exchequer chamber, at *Westminster*, on *Wednesday* the the 12th day of *May*, in the said 19th year of our reign. *If therefore* the said *Walter* should prosecute the said writ of error with effect, and also should satisfy and pay to the said *Job*, (if the said judgment should be affirmed, or the said writ of error be discontinued in his default, or he should be

onsuited therein,) as well the damages, costs and charges aforesaid, adjudged upon the said judgment, as also all such costs, charges, and damages, as should be awarded to the said *Ann*, for delaying of execution of the judgment aforesaid, for prosecuting the said writ of error; then the said recognizance should be void, or else to be and remain in full force and virtue. Which said recognizance, the said justice, afterwards, (to wit) on the said 3d day of *May*, in the 19th year aforesaid, brought into our said court before us, to be inrolled, and the same was then and there inrolled in our said court before us, as of the said *Easter* term, in the 19th year aforesaid: As by the record thereof, now remaining in our court before us, manifestly appears. *And whereas* such were the proceedings, in the said cause upon the writ of error aforesaid, in our said court of *Exchequer Chamber* at *Westminster* aforesaid, before our said then Justices of the *Bench* aforesaid, and the barons of our court of Exchequer aforesaid, of the degree of the *coif*, that afterwards, (to wit) on the 6th day of *November*, in *Michaelmas* term, in the 20th year of our reign, the said writ of error * was duly nonprossed, and 12 *l.* were then and there adjudged, in and by the said court of our Exchequer chamber, at *Westminster*, to the said *Job* for his costs, and damages, on occasion of the delay of execution of the aforesaid judgment, by the prosecution of our said writ of error; as by the record thereof, remitted into our court before us, at *Westminster* aforesaid, from our said court of our Exchequer chamber, and now there remaining,

* Or, the judgment aforesaid was in all things affirmed manifestly

manifestly appears. And afterwards, the said *John Spencer*, at *Westminster*, in your county, made his last will and testament in writing, and thereby appointed *Thomas Atall* executor thereof; and afterwards died there; the said *Job* being no ways satisfied of his damages, costs and charges aforesaid, adjudged on the said judgment, or any part thereof, or the said 12 *l.* so adjudged to the said *Job*, for his costs and damages aforesaid, or any part thereof; as we have received information, in our said court before us, from the said *Job*: Wherefore the said *Job* hath intreated us to provide him a proper remedy in this behalf: And we being willing that what is just should be done on this occasion, command you, that by good and lawful men of your bailiwick, you make it known to the said *Thomas Atall*, as executor in form aforesaid, that he be before us, at *Westminster*, on *Wednesday* next after the octave of the *Holy Trinity*, to shew if he hath or knows of any thing to say for himself, why the said *Job* ought not to have his execution against him, for the said 200 *l.* by the said *John* acknowledged in form aforesaid, according to the force, form, and effect of the said recognizance; if it shall seem expedient to him so to do. And further to do and receive what our court before us, shall then and there consider of him in this behalf. And have you there then the names of those by whom you shall make it known to him, and this writ. Witness *William* Earl of *Mansfield*, at *Westminster*, the 8th day of *May* in the 20th year of our reign.

Stormont and *Way*.

Previous to any proceedings against the bail, the recognizance must be entered on a roll by itself, by the attorney for the defendant in error, docketed and left in the treasury at *Westminster*; thus,

The term the bail was given in.

Pleas *before our lord the king, at* Westminster, *of* Michaelmas *term, in the* 21*st year of the reign of our sovereign lord* George *the third, by the grace of God, of* Great Britain, France, *and* Ireland, *king, defender of the faith, &c. And in the year of our Lord,* 1780.

Roll 454.

England, to wit, **Be it remembered**, that on *Tuesday* next after fifteen days from the day of Saint *Martin*, in this same term, before our lord the king, at *Westminster*, Sir *William Henry Ashhurst*, knight, one of the justices of our said lord the king, assigned to hold pleas before the king himself, hath here recorded, that on the eighteenth day of *November*, in the year of our Lord, one thousand, seven hundred and eighty, before the same justice, at his chambers, situate in *Serjeant's-Inn, Chancery-Lane, London*, came *John Free* of *High-Street*, in the parish of *Saint Mary-le-Bone*, otherwise *Marybone*, in the county of *Middlesex*, gentleman, and *Joseph Cape*, of *Upper Grosvenor's Street*, in the parish of Saint *George Hanover Square*, in the said county of *Middlesex*, gentlemen, in their own pro-

proper persons, and according to the form of the statute in such case made and provided, acknowledged themselves, and each of them, separately, did acknowledge himself, to owe to *Francis Martin*, the sum of three hundred and fifty-four pounds, of lawful money of *Great Britain*, to be paid to the said *Francis*, his executors, or assigns. And unless they should so do, the said *John* and *Joseph*, did grant and agree, that the said three hundred and fifty-four pounds of their, and each of their lands, and chattels, should be made and levied to the use of the said *Francis*.

The condition of the above recognizance is such, *That whereas* the aforesaid *Francis* lately, in the court of our said lord the king, before the king himself, at *Westminster*, by bill, without the writ of our said lord the king, and by the judgment of the same court, recovered against *Richard Berry*, one hundred and seventy-seven pounds for his damages which he hath sustained, as well by means of the not performing certain promisses and undertakings, lately made by the said *Richard*, to the said *Francis*, as for his costs and charges, by him about his suit in this behalf expended; whereof the said *Richard* hath been convicted, as appeareth of record, in the said court of the said lord the king, before the king himself, at *Westminster*. *And whereas* the said *Richard* hath brought a writ of error upon the judgment aforesaid, returnable before the justices of our said lord the king of the *Common Bench*, and barons of his *Exchequer*, of the degree of the *coif*, in the *Exchequer Chamber*, on *Saturday* the

twenty-fifth day of *November*, in the ſaid twenty-firſt year of the reign of our ſaid lord the king. *If therefore* the ſaid *Richard* ſhall proſecute the ſaid writ of error with effect, and alſo ſhall ſatisfy and pay to the ſaid *Francis*, if the ſaid judgment ſhall be affirmed, or the ſaid writ of error be diſcontinued in his default, or he ſhall be nonſuit therein, as well the damages, coſts, and charges aforeſaid, adjudged upon the ſaid judgment; as alſo all ſuch coſts, charges, and damages, as ſhall be awarded to the ſaid *Francis*, for delaying of execution of the ſaid judgment, by the proſecution of the ſaid writ of error: then this recognizance to be void; or otherwiſe, to be and remain in full force and virtue.

APPENDIX

APPENDIX.

PLEAS in the *Exchequer Chamber* at *Westminster*, before Sir *William de Grey*, knight, chief justice of the *Common Bench* of our sovereign lord the king, Sir *John Skynner*, knight, chief baron of the *Exchequer* of our sovereign lord the king, of the degree of the *coif*, Sir *Henry Gould*, knight, Sir *William Blackstone*, knight, and Sir *George Nares*, knight, the three other justices of the *Common Bench* of our sovereign lord the king: and also before Sir *James Eyre*, knight, Sir *Beaumont Hotham*, knight, and Sir *Richard Perryn*, knight, the three other barons of the *Exchequer* of our sovereign lord the king, of the degree of the *coif*, on the day of in the twentieth year of the reign of king *George* the third, *&c.*

The general proceedings in the *Exchequer Chamber.*

The day the cause comes into the *Exchequer Chamber.*

Our sovereign lord the king hath sent to his right trusty, and well beloved, *William* Earl of *Mansfield*, his chief justice appointed to hold *pleas* before our lord the king himself, his writ in these words, that is to say, **George** the third, by the grace of God, of *Great Britain*, *France*, and *Ireland*, king, defender of the faith, *&c.* To our right trusty and well beloved, *William* Earl of *Mansfield*, our chief justice appointed to hold pleas in our court

The writ of error.

before us, greeting: whereas by the Statute made in the parliament holden at *Westminster*, the 23d day of *November*, in the 27th year of the reign of the lady *Elizabeth*, late queen of *England*, it was by the authority of the same parliament, (amongst other things,) enacted, that when any judgment, at any time then after, should be given in the court of *King's Bench*, in any suit or action of *debt*, *detinue*, *covenant*, *accompt*, *action upon the case*, *ejectment*, *or trespass*, first commenced, or to be commenced there, other than such only where we should be a party, the plaintiff, or the defendant, against whom such judgment should be given, may, at his election, sue forth out of the court of *Chancery*, a special writ of error, to be devised in the said court of *Chancery*, directed to the chief justice of the said court of *King's Bench*, for the time being, commanding him to cause the record, and all things touching the said judgment, to be brought before the justices of the *Common Bench*, and the barons of the *Exchequer*, into the *Exchequer Chamber*, there to be examined by the said justices of the *Common Bench*, and barons aforesaid; which said justices of the *Common Bench*, and such barons of the *Exchequer*, as are of the degree of the *coif*, or *six* of them at the least, by virtue of the said act, shall thereupon have full power, and authority, to examine all such errors as shall be assigned, or found, in or upon such judgment; and thereupon to reverse or affirm the said judgment as the law shall require: other than for errors to be assigned or found for, or concerning

ing the jurisdiction of the said court of *King's Bench*, or any want of form in any writ, return, plaint, bill, declaration, or other pleading, process, verdict, or proceeding whatsoever. And that after the said judgment shall be affirmed, or reversed, the said record, and all things touching the same, shall be removed and brought back into the said court of *King's Bench*, that such further proceedings may be had thereupon, as well for execution, as otherwise, as shall appertain: as in the said statute is more fully contained. And forasmuch as in the record and process, as also in giving of judgment, in a plaint which was before us by bill, between *William Montgomery*, and *Thomas Pembroke*, of a plea of trespass on the case, as it is said, manifest error hath intervened, to the great damage of the said *Thomas*, as by his complaint we are informed: which said error no way toucheth us, or the jurisdiction of the said court of the said *Bench*, or any want of form in any writ, return, plaint, bill, declaration, or other pleading, process, verdict, or proceeding whatsoever, as we are informed. We therefore, willing that the said error, if any be, be duly amended, according to the form of the said statute, and full and speedy justice done to the said parties in this behalf; do command you, that if judgment be given thereupon, that then you cause the record and process aforesaid, with all things touching the same, to come before the said justices of the *Common Bench*, and barons of our said *Exchechequer*, into our *Exchequer Chamber*, on *Saturday*, the 6th day of *November* next ensuing, that

that the ſaid juſtices and barons, viewing and examining the record and proceſs aforeſaid, may cauſe further to be done therein, as of right, and according to the form of the ſaid ſtatute, ſhall be meet to be done. Witneſs ourſelf, at *Weſtminſter*, the twenty-third day of *June*, in the twentieth year of our reign.

The anſwer of *William* Earl of *Mansfield*, chief juſtice within-named.

The record and proceſs of the plaint, whereof mention is within made, with all things touching the ſame, to the juſtices and barons within ſpecified, at the day and place within contained, I certify in a certain ſchedule to this writ annexed, as to me is within-commanded.

Mansfield.

The tranſcript of the record from the *King's Bench.*

Pleas before our lord the king, at *Weſtminſter*, of the term of the *Holy Trinity*, in the twentieth year of the reign of our ſovereign lord *George* the third, by the grace of God, of *Great Britain*, *France*, and *Ireland*, king, defender of the faith, *&c.* Roll. 835.

Middleſex, (to wit) *William Montgomery* puts in his place *John Den* his attorney, againſt *Thomas Pembroke*, in a plea of treſpaſs on the caſe.

Middleſex, (to wit) the ſaid *Thomas Pembroke* puts in his place *Richard Fen* his attorney, at the ſuit of the ſaid *William Montgomery*, in the plea aforeſaid.

Middleſex,

Middlesex, (to wit) **Be it remembered**, that in *Easter* term last past, before our lord the king at *Westminster*, came *William Montgomery*, by *John Den* his attorney, and brought into the court of the said lord the king, then there, his bill against *Thomas Pembroke*, being in the custody of the marshal of the marshalsea of the said lord the king, before the king himself, of a plea of trespass on the case; and there are pledges for the prosecution, (to wit) *John Doe*, and *Richard Roe*: which said bill follows in these words, (to wit.) **Middlesex**, (to wit) *William Montgomery*, complains of *Thomas Pembroke*, being in the custody of the marshal of the marshalsea of our lord the king, before the king himself. For that whereas the said *Thomas*, on the first day of *January*, in the year of our lord, one thousand, seven hundred, and seventy-nine, at *London*,* (to wit) at *Westminster*, in the county of *Middlesex* aforesaid, made his certain note in writing, commonly called a promissory note, his own hand being thereunto subscribed, bearing date the same day and year aforesaid, and then and there delivered the said note to the said *William*: by which same note the said *Thomas* promised to pay to the said *William*, by the name and description of Mr. *William Montgomery*, or order, one month after date, the sum of fifty pounds, being for value received. By reason whereof, and by force of the statute in such case made and provided, the said *Thomas* became liable to pay to the said *William* the

The declaration by *J. Lane*, Esq;

* The note was dated *London*, 1*st January*, 1779.

said

ſaid ſum of money mentioned in the ſaid note, according to the tenor and effect of the ſame note. And being ſo liable, the ſaid *Thomas*, in conſideration thereof, afterwards, (to wit) on the ſame day and year aforeſaid, at *Weſtminſter* aforeſaid, undertook, and then and there faithfully promiſed the ſaid *William* to pay him the ſaid ſum of money mentioned in the ſaid note, according to the tenor and effect of the ſame note. **And whereas alſo** the ſaid *Thomas* afterwards, (to wit) on the ſixth day of *February*, in the year of our Lord, one thouſand, ſeven hundred, and ſeventy-nine aforeſaid, at *Weſtminſter* aforeſaid, in the ſaid county of *Middleſex*, was indebted to the ſaid *William* in the ſum of one hundred pounds, of lawful money of *Great Britain*, for money before that time *had and received* by the ſaid *Thomas* for and to the uſe of the ſaid *William*. And being ſo indebted, the ſaid *Thomas*, in conſideration thereof, afterwards, (to wit) on the ſame day and year laſt aforeſaid, at *Weſtminſter* aforeſaid, in the ſaid county of *Middleſex*, undertook and then and there faithfully promiſed the ſaid *William*, to pay him the ſaid laſt-mentioned ſum of money, whenever afterwards he the ſaid *Thomas* ſhould be thereto requeſted. (*Add ſuch other counts as the nature of the caſe may require. See pages* 23, 24, 25, 26, 27, 80, and 81.) **Nevertheleſs** the ſaid *Thomas*, not at all regarding his ſaid ſeveral promiſes and undertakings, in form aforeſaid made, but contriving, and fraudulently intending,

to

to deceive and defraud the ſaid *William* in this behalf, hath not paid to the ſaid *William*, the ſaid ſeveral ſums of money, or either of them, or any part thereof. (Although the ſaid *Thomas* afterwards, (to wit) on the ſame day and year laſt aforeſaid, and often ſince, at *Weſtminſter* aforeſaid, in the ſaid county of *Middleſex*, hath been requeſted by the ſaid *William* to pay him the ſame.) But to pay the ſame to the ſaid *William* he the ſaid *Thomas* hath hitherto wholly refuſed, and ſtill doth refuſe, and the ſame are ſtill unpaid; to the damage of the ſaid *William*, of one hundred pounds, and therefore he brings his ſuit, *&c.*

And now at this day, that is to ſay, on *Friday* next after the morrow of the *Holy Trinity*, in this ſame term, before our lord the king, at *Weſtminſter*, comes the ſaid *William* by his attorney aforeſaid; And the ſaid *Thomas*, although at this ſame day ſolemnly called, doth not come, nor ſay any thing in bar or preclusion of the ſaid action, of the ſaid *William*; whereby the ſaid *William* remains thereof undefended againſt the ſaid *Thomas*. For which reaſon the ſaid *William* ought to recover his damages, on account of the premiſes, againſt the ſaid *Thomas*. But becauſe it is not known to the court of our ſaid lord the king, now here, what damages the ſaid *William* hath ſuſtained by reaſon of the ſaid *Thomas* not having performed his ſaid promiſes and undertakings; it is therefore commanded to the ſheriff of the ſaid county of *Middleſex*, that,

Imparlance.

Judgment by default.

Inquiry awarded.

that, by the oath of twelve good and lawful men of his bailiwick, he diligently inquire what damages the said *William* hath sustained, as well on occasion of the said *Thomas*'s not having performed his several promisses and undertakings aforesaid, as for his the said *William*'s costs and charges, which he hath been put unto, about his suit in this behalf. And that the said sheriff send the inquisition which he shall take thereupon to our lord the king, at *Westminster*, on *Wednesday next after three weeks of the Holy Trinity*, under his seal, and the seals of those by whose oath he shall take the said inquisition, together with the writ of our said lord the king to him thereupon directed. The same day is given to the said *William* at the same place. *At which day* before our lord the king, at *Westminster*, comes the said *William* by his attorney aforesaid; and the sheriff (to wit) *Robert Peckham*, Esq; and *Richard Clark*, Esq; returns a certain inquisition, indented, taken before him, at the *Guildhall*, *Westminster*, in the said county of *Middlesex*, on the twenty third day of *June*, in the twentieth year of the reign of our said lord the king, by virtue of the said writ of inquiry, by the oath of twelve good and lawful men of his bailiwick: whereby it is found, that the said *William* hath sustained damages, by occasion of the premises aforesaid, besides his costs and charges, which he hath been put unto about his suit, in this behalf, to 52 *l.* 10 *s.* And for those costs and charges to twenty shillings. —— **Therefore it is considered**, that the said *William* do recover

Inquisition returned.

Judgment signed the

ver against the said *Thomas* his damages aforesaid, by the inquisition aforesaid, in form aforesaid found; and also eleven pounds and ten shillings, adjudged by the court of our said lord the king, now here, to the said *William*, by his consent, for the increase of his costs and charges aforesaid: which said damages in the whole amount unto sixty four pounds. And the said *Thomas* in mercy, *&c.*

29th day of *June* 1779.

Mercy.

And thereupon comes here into court in the said *Exchequer Chamber*, the said *Thomas* in his proper person, and prays a day to assign error, or errors, in the record and proceedings aforesaid: whereupon a day is given to him, by the court here, to assign error, or errors, in the record and proceedings aforesaid, until the day of next *&c.*

General error assigned.

The next sitting of the court.

Pleas in the *Exchequer Chamber*, at *Westminster*, before Sir *William de Grey*, knight, chief justice of the *Common Bench* of our sovereign lord the king, Sir *John Skynner*, knight, chief baron of the *Exchequer* of our sovereign lord the king, of the degree of the *coif*, Sir *Henry Gould* knight, Sir *William Blackstone*, knight, Sir *George Nares*, knight, the three other justices of the *Common Bench* of our sovereign lord the king; and also before Sir *James Eyre*, knight, Sir *Beaumont Hotham*, knight, and Sir *Richard Perryn*, knight, the three other barons of the *Exchequer* of our sovereign lord the king, of the degree of the *coif*, on *Monday* the first day of *February*, in the twentieth year of the reign of king *George* the third, *&c.*

Adjournment day.

The first return in term in the *Exchequer Chamber.*

At which day comes here into court, in the said *Exchequer Chamber*, the said *Thomas* in

in his proper person, and says that in the record and proceedings aforesaid, and also in giving the said judgment, there is manifest error, in this, that is to say, that it appears by the record aforesaid, that the judgment aforesaid, in form aforesaid given, was given for the said *William* against the said *Thomas*: whereas by the law of the land, judgment ought to have been given for the said *Thomas* against the said *William*: and therefore in that there is manifest error; and the said *Thomas* prays the writ of our lord the king, directed to the sheriff of *Middlesex* aforesaid, to give notice to the said *William*, that he be here to hear the record and proceedings aforesaid; and it is granted to him. Therefore the sheriff is commanded, that by good and lawful men of his bailiwick, to give notice to the said *William* that he be here, in the said *Exchequer Chamber*, on *Wednesday*, the 28th day of *April* next. *&c.*

The first return in *Easter* term.

Pleas in the *Exchequer Chamber* at *Westminster*, before Sir *William de Grey*, knight, chief justice of the *Common Bench* of our sovereign lord the king, Sir *John Skynner*, knight, chief baron of the *Exchequer* of our sovereign lord the king, of the degree of the *coif*, Sir *Henry Gould*, knight, Sir *William Blackstone*, knight, and Sir *George Nares*, knight, the three other justices of the *Common Bench* of our sovereign lord the king; and also before Sir *James Eyre*, knight, Sir *Beaumont Hotham*, knight, and Sir *Richard Perryn*, knight, the three other barons of the *Exchequer* of our sovereign lord the king,

of the proper of the cost, on Friday, the [illegible] day of April in the twelfth year of the reign of king George the third, &c.

At which day comes here into court, by the said Exchequer Chamber, as well the said Thomas, in his proper person, as the said William, in his proper person, and the said sheriff did not return the said writ, nor did any thing thereupon: therefore the said Thomas, as before, says, that in the record and proceedings aforesaid, and also in giving the said judgment, there is manifest error, by alleging the error aforesaid, by him there for error assigned, and alleged, and prays that the said judgment, by reason of said error, and other errors in the record and proceedings aforesaid, may be recorded, annulled, and quashed. And the said William says, there is not any error in the record and proceedings aforesaid, or in giving the judgment aforesaid; and prays that the court of Exchequer Chamber of our lord the king, here, would proceed to examine as well the record and proceedings aforesaid, as the alleged cause for the said Thomas above assigned for error, and that the said judgment may stand in its full force and effect. But because, the court of our said lord the king, here, is willing to delibe[illegible] upon the premises, before judgment thereupon, a day is given to the parties here, in the said Exchequer Chamber, until Friday the [illegible] day of [illegible] to hear judgment thereupon, [illegible] the court of our said lord the king, of [illegible]

of the degree of the *coif*, on *Wednesday* the 28th day of *April* in the twentieth year of the reign of king *George* rhe third, *&c.*

At which day comes here into court, in the said *Exchequer Chamber*, as well the said *Thomas*, in his proper person, as the said *William*, in his proper person, and the said sheriff did not return the said writ, nor did any thing thereupon: therefore the said *Thomas*, as before, says, that in the record and proceedings aforesaid, and also in giving the said judgment, there is manifest error, by alledging the error aforesaid, by him above for error assigned, and alledged; and prays that the said judgment, by reason of that error, and other errors in the record and proceedings aforesaid, may be reversed, annulled, and entirely held for nothing. And the said *William* says, there is not any error in the record and proceedings aforesaid, or in giving the judgment aforesaid; and prays that the court of *Exchequer Chamber* of our lord the king, here, would proceed to examine as well the record and proceedings aforesaid, as the aforesaid cause by the said *Thomas* above assigned for error; and that the said judgment may be in all respects affirmed. But because the court of our lord the king, here, is willing to advise of and upon the premisses, before judgment is given thereupon; a day is given to the said parties here, in the said *Exchequer Chamber*, until *Friday* the 11th day of *June* next, *&c.* to hear judgment thereupon; for that the court of our lord the king of

The day of adjournment.

the *Exchequer Chamber* is not yet thereof advised, &c.

Middlesex, (to wit) *Thomas Pembroke*, puts in his place, *Richard Fan* his attorney, against *William Montgomery*, in a plea of correcting errors.

Middlesex, (to wit.) The said *William Montgomery*, puts in his place *John Den* his attorney, at the suit of the said *Thomas Pembroke* in the plea aforesaid.

The names of the judges present at the Affirmance.

Pleas in the *Exchequer Chamber*, at *Westminster*, before Sir *John Skynner*, knight, chief baron of the *Exchequer* of our sovereign lord the king, of the degree of the *coif*, Sir *Henry Gould*, knight, Sir *William Blackstone*, knight, and Sir *George Nares*, knight, three of the justices of the *Common Bench* of our sovereign lord the king; and also before Sir *Beaumont Hotham*, knight, and Sir *Richard Perryn*, knight, two of the barons of the Exchequer of our sovereign lord the king, of the degree of the *coif*, on *Friday* the 11th day of *June*, in the twentieth year of the reign of king *George* the third, &c.

At which day comes here into court, in the said *Exchequer Chamber*, as well the said *Thomas*, as the said *William*, by their attornies aforesaid. *Whereupon* the premisses being considered, and as well the record and proceedings aforesaid, and the judgment thereon given, as also the cause for error above assigned, being, by the court of our lord the king here, diligently examined, and fully understood: *It appears* to our said court of our lord the king here, that the judg-

judgment aforesaid is not in any wise erroneous, or defective, and that in the record and proceedings aforesaid there is not any error. **Therefore it is considered**, that the judgment aforesaid be in all respects affirmed, and stand in it's full force, strength, and effect: the said cause for error above assigned and alledged in any wise notwithstanding. **And it is further considered**, that the said *William* do recover against the said *Thomas*, 18*l.* adjudged to the said *William*, at his request, by the court of our lord the king, here, according to the form of the statute in that case made and provided, for his damages, costs, and charges, which he hath sustained, by reason of the delay of the execution of the judgment aforesaid, by the prosecution of the said writ of error. *Whereupon* the record and proceedings of the said justices of the *Common Bench*, and the said barons of the *Exchequer*, before them had in the premisses, by the said justices and barons before our lord the king, wheresoever, *&c.* *Are remitted*, according, to the form of the statute of the 27th year of the reign of queen *Elizabeth*, *&c.*

Affirmance.

Costs.

Remittitur.

Nonpros in error in the *Exchequer Chamber*.

And thereupon comes here into court, in the said *Exchequer Chamber* the said *William* in his proper person, and prays a day to assign error, or errors in the record and proceedings aforesaid; whereupon a day is given him by the court here to assign error, or errors, in the record and proceedings aforesaid until —

Adjournment day.

Pleas in the *Exchequer Chamber*, at *Westminster*, before Sir *William de Grey*, knight, chief justice of the *Common Bench* of our sovereign lord the king, Sir *John Skynner*, knight, chief baron of the *Exchequer* of our sovereign lord the king, of the degree of the *coif*, Sir *Henry Gould*, knight, Sir *William Blackstone*, knight, and Sir *George Nares*, knight, the three other justices of the *Common Bench* of our sovereign lord the king; and also before Sir *James Eyre*, knight, Sir *Beaumont Hotham*, knight, and Sir *Richard Perryn*, knight, the three other barons of the *Exchequer* of our sovereign lord the king, of the degree of the *coif*, on the day of in the twenty-first year of the reign of king *George* the third, *&c.*

Affirmance day.

At which day the said *William*, being solemnly called, did not come, neither does he farther prosecute his said writ of error. *Therefore it is considered*, that the said *William* be in mercy, *&c.* *And it is farther considered*, that the said *Thomas* do recover against the said *William* 12 *l.* adjudged to the said *Thomas* at his

his requeſt by the court of our lord the king, according to the form of the ſtatute in that caſe made and provided, for his damages, coſts and charges, which he hath ſuſtained, and been put to, by occaſion of the delay of the execution of the judgment aforeſaid, and on pretence of proſecuting the ſaid writ of error. *Whereupon* the record and proceedings of the ſaid juſtices of the *Common Bench*, and the ſaid barons of the *Exchequer*, before them had in the premiſſes, hy the ſaid juſtices of the *Common Bench*, and barons of the *Exchequer*, before our lord the king wherefoever, *&c.* *Are remitted*, according to the form of the ſtatute of the 27th year of the reign of queen *Elizabeth*, *&c.*

The Exchequer Chamber *is a branch of the court of* Exchequer, *in which there are no more than two return days in every term: one is called the general affirmance day, being appointed by the judges of the* Common Pleas, *and barons of the court of* Exchequer, *to be held a few days after the beginning of every term for the general affirmance or reverſal of judgments. The other is called the adjournment day, which is uſually held a day or two before the end of every term: on the firſt of theſe days judgments are affirmed, or reverſed, or writs of error nonproſſed: The intent of the latter is, to finiſh ſuch matters as were left undone at the former; on which laſt mentioned day alſo (as well as on the firſt) judgments may be affirmed or reverſed, or writs of error nonproſſed, on paying ſixteen ſhillings extra-*

ordinary to the clerk of the errors, and setting down the cause for affirmance two days before the adjournment day: the clerk of the errors charging nine shillings and sixpence for every cause sat down for the general affirmance day, and one pound five shillings and six pence for the adjournment day.

THE END.

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ERRATA.

In *page* 13, *line* 23. for II. & II. *W.* III. *read* X. & XI. *p.* 31, note at bottom, *for* nonposs, *read* nonpros. *p.* 36, *l.* 2, from the bottom, *for* premisses, *read* promises. *p.* 52, *for* CHAP. XI. *read* CHAP. X. *&c.* *p.* 65, *l.* 5, in the foot note, for *certiorari*, read *scire facias*: *p.* 87, *l.* 25, and 26, *for* error in fact, *read* correcting error. *p.* 102, *l.* 2, for *were remitted*, read *are remitted*.

The End of the INDEX.